

<b>Public Hearing Draft Comment Set Identification Table</b>	
<b>Comment Set Number</b>	<b>Name and Affiliation of Person(s) Who Submitted Comments</b>
1	Ralph Penney, PE, LSP, Penney Engineering, Inc.
2	Bob Pelletier, Covino Environmental Associates, Inc.
3	Miriam Weil, Menzie-Cura & Associates, Inc.
4	Alexander P. Duran, Ph.D., PE, New England Organics
5	Katherine A. Fogarty, Menzie-Cura & Associates, Inc.
6	Kevin Horrigan, Commonwealth of MA, DOR, UST Program
7	Benjamin Marshall, Action Environmental, Inc.
8	Legislative and Governmental Policy Subcommittee, Mayor Timothy P. Murray's Brownfield Roundtable
9	David I. Begelfer, National Association of Industrial and Office Properties, MA Chapter
10	David R. Brown, Sc.D. Environmental and Human Health Inc.
11	Grouping of 1130 separate "Perchlorate Petition" letters from MASSPIRG members and students from various universities (Tufts, Bristol, Middlesex Community College, Clark, UMASS Dartmouth)
12	Elliot Steinberg, PE, LSP, on behalf of the Licensed Site Professional Association
13	Robert Cox, Jr., Bowditch and Dewey, on behalf of Worcester City Mayor Timothy Murray's Brownfield Roundtable
14	Andrew J. Stackpole, DoD, Department of the Navy, on behalf of the Army, Air Force and Navy
15	Robert A. Rio, Associated Industries of Massachusetts, on behalf of the Perchlorate Work Group
16	Edward A. Rachins, Mutual Oil Co., Inc.
17	Stephen Brox, on behalf of Brox Industries and other aggregate producers and industry trade associations (letters of support attached)
18	Michael Gitten, LSP, PE, ESS Group, Inc.
19	R.R. Bushnell, Massachusetts Chemistry & Technology Alliance
20	Duplicate of Comment Set #13
21	Patricia McCollough, Northeast Utilities
22	Robert A. Rio, Associated Industries of Massachusetts
23	James T. Curtis, PE, LSP
24	Susan Flanagan, Institute of Makers of Explosives
25	H. Hamilton Hackney III, National Brownfield Association, Massachusetts Chapter
26	Michael F. Knox, Massachusetts Water Works Association
27	David I. Begelfer, National Association of Industrial and Office Properties, Massachusetts Chapter
28	AMEC Earth and Environmental
29	Elliot Steinberg, PE, LSP, on behalf of the Licensed Site Professional Association

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30	Richard E. Doherty, PE, LSP, Engineering and Consulting Resources, Inc.
31	Raymond Leather, Warren Equities, Inc.
32	Matthew L. Wilson, Toxics Action Center
33	David Kriebel, Sc.D., University of Massachusetts, Lowell
34	ENSR International
35	Joseph Callanan, National Grid
36	Sovereign Consulting Inc.
37	American Council of Engineering Companies of Massachusetts & Boston Society of Civil Engineering
38	ATC Associates Inc.
39	Ralph Tella, CHMM, LSP, Lord Associates Inc.
40	Suzanne Condon, Associate Commissioner, MA Department of Public Health
41	Ralph Penney and Jesse Krawiec, Penney Engineering
42	Andrew Stackpole, DoD, Department of the Navy
43	David Begelfer, National Association of Industrial and Office Properties, MA Chapter, oral testimony, Public Hearing, Boston, November 15, 2004 . Written copy of oral testimony provided.
44	Robert Mulhy, US Army, oral testimony, Public Hearing, Boston, November 15, 2004.
45	Michael D. Davis, Clean Water Action, oral testimony, Public Hearing, Boston, November 15, 2004. Written copy of oral testimony provided.
46	Anthony Polito, oral testimony, Public Hearing, Worcester, November 17, 2004
47	Robert Cox, Jr., Bowditch and Dewey, oral testimony on behalf of Worcester City Mayor Timothy Murray's Brownfield Roundtable
48	David Dow, Sierra Club, Cape Cod chapter, oral testimony, Public Hearing, Bourne, November 16, 2004

Summary of MassDEP's Responses to Comments on the 2004 MCP Public Hearing Draft			
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<b>Front End</b>			
Front End/Note 1 Effective Date	Support delaying effective date 60-90 days from publication. Support making new standards available prior to effective date as Method 2 stds.	25	MassDEP intends to make regulations available 3 months prior to the effective date and make Method 2 stds available for use at that time. The effective date of the requirement for submitting Remedial Monitoring Reports electronically will be delayed one year from the effective date of the other amendments (voluntary submittal of the electronic RMR will be available during that year prior to its required use). Asbestos-related proposals will not be finalized as part of the 2004 amendments (asbestos-related regulatory proposals remain under development and will be issued in a separate future public hearing draft).
	Support delaying effective date; suggest 90-day delay from publication. Support making standards available prior to effective date as Method 2 stds.	27	
	Support delay of effective date 6 months from publication, particularly to allow time to adjust to electronic submittals and asbestos-related regulations.	29	
	Delay the effective date of the Method 1 standards and the Remedial Monitoring Report for a 2 to 4 month period after the other amendments take effect. This window would facilitate less informed stakeholders becoming familiar with the revisions, finalizing pending RAOs, and adjusting ongoing response actions.	38	
Front End/Note 2 Remedial Additives	The "where appropriate" clause is too vague; clarify.	27	MassDEP eliminated the "where appropriate" clause. Changed the provision to allow for the collection of background samples without analysis prior to the application of additives. Analysis can occur after application/will not hold up completion of response actions.
	Support removing the requirement for baseline sampling prior to application of Remedial Additives during situations such as UST removals where a remedial additive could be applied but there is limited time for background sampling.	29	
Front End/Note 3 Special Project eligibility	The proposal places a limit on the number of SPD permits in a municipality per year based on population. MassDEP should consider allowing more permits per year, under certain circumstances.	8,13	MassDEP created an exception to the limit where the chief municipal officer makes a written request that MassDEP consider an application above the annual cap.

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	Why are eligible applicants limited to "Eligible Person" per MGL 21E? Expand eligibility. Benefits of the Special Project Permit should not be limited.	8,13,25, 27,47	MassDEP does not want to open Special Projects, with deadline extensions, to an unlimited universe of sites. Proposal was expanded, however, to include "Eligible Tenant" as defined in MGL 21E in addition to "Eligible Person."
	Special Project Permits should be available to multiple owners or tenants (310 CMR 40.0061(3)). At larger, more complex sites, developers often coordinate among several owners/tenants.	25,27	The provision has been modified to allow for projects with multiple owners or tenants.
Front End/Special Project Designation/demonstration of adequate funding for project	The requirement to demonstrate public support by citing sources of public funding is confusing and unnecessary.	25,27	MassDEP has clarified the provision. Final amendments retain securing adequate funding as a criterion for eligible projects, but do not specify requirements for demonstrating funding or the types of funding.
Front End/Approval Process for Special Project Designation	Clarify timeframes for effective date and duration of Special Project Permit.	25,27	Clarifications made.
	Use of the 40.0720 presumptive approval provisions streamlines the Special Project Permit process. 40.0720 is unclear, however, on the status of a permit if an untimely permit extension is made. Suggest provision on the status of response actions during the presumptive approval process.	29	MassDEP believes existing provision covers these issues and that clarification is better addressed in guidance/Q&A.
Front End/Transfer of Special Project Designation	MassDEP should allow for the transfer of a SPD permit.	8,13	The final amendments provide for the transfer of a SPD to an eligible applicant.
Front End/Note 4 Clarification that a Condition of SRM only triggers 72 hour notification if release otherwise requires notification	Support proposed change.	27	Final amendments incorporate proposed change with minor modification to improve clarity.
	Support proposed change but language is unclear and requests that Department provide clarification.	29	Comment does not indicate what is unclear about the provision. Minor modification to the final amendment was made to improve clarity.
Front End/ Note 5 72-hr TOR notification for USTs	Seek clarification as to why the 0.05 gallon criteria does not apply to the outer wall of a double-walled tank; suggest reformatting revision.	27	0.05 criteria should apply to outer wall of double-walled tank; provision reformatted and revised as suggested.

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Front End/Note 7 Notification Exemption for previously "closed" disposal sites	Notification exemption is unclear. State clearly that if standards become more restrictive after site closure, new notification is not required.	16	Notification exemption has been clarified. The effect of the exemption is dependent on both the standards and the exposures at the disposal site.
	Support the effort to clarify this provision. Do not support the introduction of the new "closure" term. Suggest alternative language.	29	"Closure" term has been dropped from the provision.
Front End/Note 8 Notification exemption for naturally- occurring Arsenic/Beryllium in certain locations	Support proposal.	35	The proposal is implemented in the final amendments and expanded to include arsenic in groundwater in Worcester County.
	Support proposal. Seek expansion to apply to barium and chromium in Boston Blue Clay.	27	Changes were not made to apply to barium and chromium. RCs for those metals are much higher/not as problematic.
	Support proposal. Should be expanded to other "trace metals." Should expand to apply to fill derived from soil meeting the exemption.	29,37	Did not expand to include fill/too difficult to ensure proper review is occurring.
	Support proposal. Should be expanded to include all 14 MCP metals. RCs for cadmium, chromium and nickel are being reduced and may trigger notification.		Not expanded to other metals/MassDEP does not anticipate RCs for other metals will be as problematic.
	Support proposal. Seek expansion to apply to arsenic in groundwater in Worcester County,	27	Final amendment expanded to include arsenic in groundwater in Worcester County.
	Support proposal. Seek expansion to apply to fill derived from soil meeting the exemption.	8,13,27,47	Did not expand to include fill/too difficult to ensure proper review is occurring.
	The listing of soils (Worcester County, Boston Blue Clay) is too vague; could be applied to arsenic liberated from soil due to geochemical processes (e.g. downgradient of a landfill). Suggest that MassDEP provide guidance on the boundaries of these areas and ranges of arsenic and beryllium in these areas.	5	MassDEP intends to provide additional guidance on the intended application of this exemption.
	If insufficient data exist to establish an alternative RC for these areas, a MassDEP technical update on acceptable values for this exemption would be helpful.	34	

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Front End/Note 9 Revision to 310 CMR 40.0334 and 40.0371 requiring location-specific information	Support proposal.	29	Proposal modified in the final amendments to limit the coordinate information required in 310 CMR 40.0371 to UTM coordinates only (the regulations currently require UTM coordinates Tier Classification). Limiting the options for providing coordinates will make MassDEP's input and tracking of this information more efficient. Coordinate conversion programs are readily available for parties that gather coordinates as lat/long or Massachusetts state plan.
Front End/Note 10 Notification retraction clarification	Disagree with the change. Provision should allow parties to retract notification of a threat of a release within 60 days if the release does not actually occur.	29	Suggested change was not made as it is contrary to the intent of the revision, which is to clarify that threat of release notifications cannot be retracted if the release does not occur. Threat of release notifications are to be made and cannot be retracted if the condition(s) posing a threat of release existed.
Front End/Note 11 Clarify requirement for conducting Immediate Response Actions to address Imminent Hazards, regardless of notification exemption	Support intent of clarification. However, the proposed language is unclear.	29	Provision would apply to disposal sites where notification has been provided and response actions are already being conducted, but conditions could be considered consistent with the previous notification and therefore not requiring new notification to the Department (and thus not triggering the requirement to conduct an IRA). New provision would require conducting an IRA if the condition is determined to represent an IH, regardless of whether it triggered a new notification.
Front End/Note 12 Construction of Buildings in Contaminated Areas	Regulations should state that construction activities are considered response actions; proposed provision states that RAMs "may" include construction activities.	25,27,29	Intent of provision is to make it clear that construction can occur in the area where response actions are otherwise occurring provided certain conditions are met. The provision does not mean that construction is necessarily a response action.

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	Regulation should define permanent structure.	35	Final regulation uses the term "structure" rather than "permanent structure" since the focus is on whether the structure would preclude future remedial actions. If the structure can be dismantled and the property owner is willing to dismantle it or if the response action can occur around it, then the limitation on its construction during the course of response actions is not an issue.
	The proposed language is redundant with the Construction Policy and current regulations. LSPs have an obligation to exercise care in professional judgment.	29	The Construction Policy does not have the force of regulation.
	Support incorporation of Construction Policy approach into regulation to provide for focused assessment and cleanup of area within the footprint of structure under construction.	13	Final amendment incorporates proposed change.
Front End/Note 13 Revision to Release Abatement Measure provision (310 CMR 40.0442) on RAM soil limits, replacing term "excavation" with "generation" to be consistent with the Construction Policy	Support change.	29	Proposed change implemented in final amendments.
Front End/Note 14 Status report timeframe	Support clarification. Language as proposed does not make clear, however, that the timeline for submittal is tied to the submittal of the original plan, not a subsequent revision or addendum.  Also, provision should provide for orally approved RAMs.	29	Provision was clarified to indicate that timeline applies to the submittal of the original RAM plan.  It is not necessary to provide a timeframe related to oral approval of a RAM Plan. The June 2003 MCP amendments require a RAM Plan before continuing with the continuation of a removal action initiated as an LRA.
Front End/Notes 15 -17 Definition of Active Remedial Monitoring Program	Active Remedial Monitoring Program – definition could encompass phytoremediation, therefore exclusion of landscaping is confusing.	27	"Landscaping" reference has been deleted from definition.

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	Support change in definitions of Active Operation and Maintenance, Monitored Natural Attenuation, Active Remedial System and Active Remedial Monitoring Program.	29	
	Concern any site monitoring will be confused with monitoring defined as Active Remedial Monitoring Program.	29	Active Remedial Monitoring Program involved monitoring that constitutes the remedy for achieving a Permanent Solution where such monitoring is the chosen remedy (as is the case of Monitored Natural Attenuation, where the monitoring is confirming the decline in OHM concentrations over time in the groundwater). Other monitoring need not fall under this definition. If this proves to require further clarification, MassDEP can clarify in guidance.
Front End/Notes 15-17 IRA Status and Monitoring Reports	The requirement to submit reports every 30 days for IRAs to address Imminent Hazard or that include active operation and maintenance of a remedial system is too frequent, will add unnecessarily to costs. Suggest frequency of every 90 days to simplify and provide one timeframe for submittals.	25,27	MassDEP has simplified proposal from 4 possible reporting periods to two – monthly for systems addressing Imminent Hazards and Conditions of Substantial Release Migration and every 6 months for all other systems. The frequency of reporting for IH/SRM systems is intended to allow the Department to monitor and follow-up in a timely way on systems that are malfunctioning/not operating. Extending timeframe to 3 months would not allow timely response; MassDEP limited monthly reporting to most critical response actions.
	Do not agree with proposed frequencies for submitting the RMR; suggest every 90 days for IRAs, and every 6 months for the other reports.	29	
	Not necessarily opposed to the frequency proposed for remedial systems operated under IRAs or RAMs. However, it seems contrary to the existing 6-month status report frequency for Phase V/ROS to require the reports at a different frequency. The submittal frequency varies greatly depending on the MCP status of the site and the type of remediation. Effort to track this appears an unnecessary burden.	36	



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	Agree with the concept of standardizing information submitted on remedial systems with the RMR; unsure what the final format of the proposed form will be; the regulations reference a report, but the draft form is a transmittal form.	36	The draft "transmittal" form provided for review constitutes the Remedial Monitoring Report in the regulations. Final regulations and form use same term – Remedial Monitoring Report, although the form is technically also a transmittal form. In the first year after the effective date of the regulations, parties will have the option of submitting the information using the electronic form or providing the same information in hard copy.
	Recommend longer phase in to the electronic submittal requirement.	29	
	Concerned that the provision does not include a "transition" provision for existing response actions.	29	
	Can the monthly submittal of RMR to address IH or SRM conditions be clarified so that once the condition is stabilized, the frequency can be reduced?	38	A provision was added (40.0027) for Remedial Monitoring Reports that addresses both the transition for existing response actions and the transition to the required electronic submittal after one year from the effective date of the other amendments. The Department will provide additional guidance on this requirement/transition.  The frequency can be reduced when the conditions no longer represent IH or SRM. This transition can be addressed in guidance.
Front End/Notes 15-17 Remedial Monitoring Report	Clarify the timeframes for submittal of RMR with respect to submittal of response action status reports; MassDEP may wish to eliminate Status Report requirement where RMR is being submitted.	27	MassDEP has clarified relationship of status report to RMR for applicable response actions. Operationally, RMR is a subsection of the Status Report transmittal form. MassDEP did not choose to eliminate Status Report where RMR is required; scope of the Status Report is broader than that of RMR.
	Support the implementation of the Remedial Monitoring Report.	31	MassDEP is implementing the proposal in the final amendments.

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	How can a Phase V Status report be submitted prior to a completion statement for Phase IV.?	6	Phase V Status reports should not be submitted prior to completion of Phase IV. MassDEP has clarified language related to the submittal of status reports. MassDEP has also added a provision to provide for a Phase IV status report, to document the initial start-up and fine tuning of a remedial system as part of the Phase IV remedy implementation.
Front End/Notes 15-17 Remedial Monitoring Report  Comments on Draft Remedial Monitoring Report Form	<ul style="list-style-type: none"> <li>• Add lat/long and linked RTNs</li> <li>• Add date of written plan addendum</li> <li>• For volumetric discharges include instantaneous and cumulative</li> <li>• Add space for additional operators</li> <li>• Eliminate certification of submittal; requesting signature on a frequent basis would be cumbersome</li> </ul>	38	RMR was modified from the draft; content of the final forms is largely the same as the proposed draft. Certification of the form is still required. Option exists for LSP to sign on behalf of party conducting cleanup.
Front End/Note 18 Clarify at 310 CMR 40.0810 that Comprehensive Response Actions Completion Statements for each phase must be received in sequential order or concurrently	The proposed wording could be read as not allowing for concurrent submittals of Phase Completion Statement.	29,30	MassDEP agrees and has modified the wording so that it fits the situation of concurrent Phase submittals.
Front End/Note 20 Detailed disposal site map – mapping horizontal and vertical extent of contamination	Requiring the depiction of the vertical limits of a disposal site on a disposal site map is unnecessary in many cases and should not be a requirement for all sites. These limits can be described verbally.	27, 29,30	MassDEP modified provision to require “the boundaries of the disposal site in plan view, and, as appropriate, the vertical extent of contamination at the disposal site.”
Front End/Note 21 Remedy Operation Status Provide for ROS for remedies that employ active monitoring	Support change to allow ROS for actively monitored remedies such as application of remedial additives, reactive barriers, and monitored natural attenuation.	29	Final amendments implement proposed change to remedies that qualify for ROS.
Front End/Note 22 Clarification that completion	Support clarification.	29	Clarification implemented in the final amendments.

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of Phases III and IV is required prior to implementing Remedy Operation Status			
Front End/Note 23 Modification to add parties under Remedy Operation Status	Support change.	29	Based on comments from MassDEP staff, changes were made to allow for the transfer of ROS to a new party in addition to the proposed modification of ROS to add parties.
	Modify to allow for a change of remedial alternative without termination of ROS.	29	MassDEP does not agree with this recommendation. ROS is applicable to disposal sites where a remedy has been selected, developed and implemented for which the LSP and party conducting response actions have a high degree of confidence that such remedy will achieve the cleanup standards necessary for a Permanent Solution. 21E provides a liability endpoint to parties that maintain Remedy Operation Status. It is inappropriate, therefore, to provide flexibility to wholly change remedies while maintaining ROS because such flexibility would be inconsistent with ensuring that parties who implement ROS identify and develop an effective remedy for achieving a Permanent Solution. While MassDEP recognizes that remedies implemented under ROS may prove to be ineffective in achieving a Permanent Solution and thus parties will be required to seek an alternative, the development and initial implementation of a new remedial alternative are Phase IV activities, and should not occur under ROS.
	Is the reference in 310 CMR 40.0893(2)(f) to status report frequencies specified in 40.0891(5) correct ? 40.0891(5) refers to a report potentially generated prior to the completion of Phase IV.	6	The reference to 40.0891(5) has been deleted and 40.0891(5) has been modified to remove language about status report frequencies, as the frequencies are addressed in other provisions.
Front End/Note 24 Termination of Remedy	How does seasonal (winter) shutdown affect ROS?	6	ROS does not provide specifically for seasonal shutdown.

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Operation Status			
Front End/Note 26 Establishing two types of Class C Response Action Outcomes (Temporary Solutions)	Strongly support the proposed change. The regulations should address at what point existing Class C disposal sites need to identify whether the site has C-1 or C-2 status. We suggest such transition should be made by or upon submitting the next 5 year Periodic Evaluation.	29	The final amendments implement the two types of Temporary Solutions and the recommendation to transition existing Class C RAOs at the next Periodic Evaluation was incorporated.
	The regulations should reference the difference between achieving a Class C-2 Response Action Outcome versus achieving Remedy Operation Status. Is the provision for Class C-2 necessary?	36	Class C-2 is a milestone, not a Phase of work. At some disposal sites, a party may have achieved the requirements of the Class C milestone, but has not yet completed a Phase IV Remedy Implementation Plan, required prior to implementing Phase V/ROS. Parties are required to achieve some class of RAO within five years from Tier Classification; parties proceeding with response actions can file Class C to satisfy this deadline and then proceed with Phase IV and Phase V.
Front End/Note 27 Add reference to the evaluation of measures to eliminate, prevent, or mitigate Critical Exposure Pathways to the feasibility evaluation provisions in 310 CMR 40.0860	Support change.	29	Change incorporated into final amendments.
Front End/Note 28 Response Actions after RAO	Section uses "remedial activities" and "remedial actions." Is there a distinction?	27	No distinction was intended. Revised to use "remedial action" throughout.
	Section 40.1067(4)(c) indicates that remedial action that exceed the scope of a RAM shall be conducted as a Phase IV. Is it correct to assume that excavation of more than 1500 cy soil with a financial certification is within the scope of a RAM?	25,27	Scope of RAM is defined in the regulations in 40.0442 and includes the ability to generate more than 1500 cy if the party certifies that he/she has sufficient financial resources to manage the excavate. There may still be cases outside of the scope of a RAM for which Phase IV is appropriate.

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	Support replacing 40.0581 and 40.0582 with a new section comprehensive section at 40.1067. Disagree, however, with the limitations placed on sites with AULs where response actions exceed the volume limits and thus it is proposed that the submittal of RAM Plan be required.	29	MassDEP feels the provision strikes a reasonable balance, allowing some management of soil to occur without the submittal of a RAM plan, while requiring the Plan where the soil being managed exceeds the volume limits. Many parties have asked MassDEP how they can document work occurring under an AUL after an RAO. Parties have indicated that they wish to provide MassDEP a record of such work. In addition, such documentation is key to MassDEP's efforts to ensure compliance with AUL provisions, and to understand the nature and scope of remedial work that is occurring at these sites after an RAO.
	How do the proposed regulations interact with existing URAM provisions? If the installation of utilities involves less than the scope of the limited soil excavation activities outlined in 40.1067, is a URAM filing needed?	35	A URAM filing would not be needed, just as it is not needed if the limited soil excavation can be done as a Limited Removal Action.
	Do not support proposed public involvement changes for post-RAO remedial actions.	29	There are limits on public involvement at those sites where a Class A or B RAO has been achieved (e.g., cannot implement PIP, unless MassDEP otherwise specifies). The final amendment does provide for notices to local officials where RAM Plan is required.
<b>Public Involvement</b>			
Public Involvement - General	Concerned about the overall expansion of public involvement provisions. Almost all will involve additional expenditure of time, money and effort to comply and in most cases, will result in little additional public benefits.	9,22,27	MassDEP reconsidered the collective impact of the public involvement proposals and sought in the final amendments to strike a balance between the likely benefits of the notice/information provided to the public and local officials with the added burden these notices placed on parties conducting response actions, as well as other issues, such as public perception of disposal site risk, and Department resources. Significant modifications have been made to the proposals in the final amendments to address concerns, including the withdrawal of the notice to disposal site abutters.
	Particularly concerned about the public notification requirements. The proposed changes should be carefully reconsidered. They will have serious legal ramifications and cause public perceptions/reactions that are not commensurate with the associated site conditions.	29	

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	<p>We support the proposed changes to provide key additional information to the public and affected parties in a more direct, timely and accessible manner. In order for the privatized system to work, there needs to be integrity and faith in the process. While the PIP program is an excellent mechanism for participation, the end of funds for Technical Assistance Grants eliminated vital resources for hiring technical experts to monitor the remediation process. The expansion of public involvement beefs up public oversight of the response action process and gives residents more tools</p>	32	
Public Involvement/Note 2 Use of Ads for Public Notices	<p>MCP-related notices are not significantly different from other government permit or hearing-related notices. Notices will bring inappropriate attention and the result will be time and effort expended by MassDEP, local officials and parties conducting response action to respond to inquiries generated by ads.</p>	25,27	<p>Final amendments include provision for the use of ads in place of legal notices where the newspaper allows such ads and where an ad of comparable size to a legal notice does not exceed the cost of a legal notice by more than 20%. An ad, as the comment reflects, is more likely to be seen by persons with an interest in response actions at a disposal site than a legal notice.</p>
	<p>Change is not necessary. MCP notices should be consistent with other public notices; not held to a different or higher standard.</p>	34	
	<p>Object to the change proposed; it is inconsistent with [other] regulatory permit requirements. If change is made, MassDEP should provide a standard format for the notice.</p>	29	<p>A standard notice format will be provided by MassDEP.</p>
	<p>What do the regulations mean by public notices "shall be in a form established by the Department"?</p>	27	<p>The reference to "a form established by the Department" refers to public involvement guidance on the content and format of the notices, which is provided on MassDEP's website.</p>
	<p>Support change. It will make this information more accessible and does not impose an added financial burden on PRPs.</p>	32	<p>Final amendments include the proposed change.</p>

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Public Involvement/Note 4 Property owner receives sampling results	Receipt of this information will trigger statute of limitations for property damage claims in most circumstances. Does the recipient of the notice also have a duty to obtain the relevant data?	25	Whether the receipt of the data might trigger the statute of limitations depends on specific facts of the case. The proposal was modified in the final amendments to require that the property owner receive the data, rather than receive notice that the data is available upon request. That change eliminates the issue of whether the notice recipient has an obligation to request the data. While some parties provide sampling results under current access agreements, that practice is not consistent.
	Oppose provision. Private access agreements are sufficient to achieve the goals of the suggested revisions.	29	
	This is a common sense change that will provide key information for individuals to protect public health and their property values.	32	
	As resident living near a disposal site, supports the property owners receipt of sampling results.	46	
	Request definition of property owner. When responding to transformer spills along state-owned or local roadways it will be difficult to determine property owners. Request an exemption in such cases.	35	MassDEP recognizes the difficulty that may be presented by such cases, but it also feels that the owners of state and local rights of way should have this information. Additional guidance may be warranted as to the appropriate recipient of such notices in such cases.
	Extend timeframe for providing sampling results to property owner to 60 days; 30 days is not sufficient to allow for interpretation of the results and preparation of a report.	35	The final amendments require that the sampling results be sent to the property owner within 15 days of the date that they are received by the party conducting the sampling. The person providing the results will not be expected to provide any interpretation of the results other than a generic statement of public involvement activities available under the MCP. MassDEP intends to provide a standard notice for use in providing these results.
Public Involvement/Note 5 Providing Local Officials with copy of Release Notification Forms	The scale and timeliness of many releases do not require the review of local records to obtain assessor map information. Additionally, the other proposed provision provides accurate location information.	36	The final amendments implement the requirement to provide a copy of the RNF to local officials, but eliminate the assessor's map reference requirement.
	Support proposal.	29	

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Public Involvement/Note 6 Providing Notice to "Affected Individuals" of IRAs conducted to address IHs or CEPs	Proposal could require notification of hundreds of tenants in the case, for example, of a large 50-plus acre shopping center where a response action to address an IH in soil at a far corner of the property. Waste of time and money for no benefit.	9,22,25,27 29,35	Most of the suggested text changes have been incorporated. Proposal applies to property owners and occupants who are "Affected Individuals" as that term is defined in the MCP and is limited to "persons who may experience significant health or safety from the disposal site". Notification to owners and occupants who are on the same property but distant from the location where the response action is occurring would not be necessary.
	Subparagraph (d) requirement to post notices in the case of a multiunit structure suffers from a similar lack of focus.	25,27	MassDEP did not eliminate the requirement to provide the notice in a format that can be posted, but again that posting would apply to Affected Individuals.
	Support provision. Key provision that will further protect public health.	32	Comment noted.
	Notification period of 48 hours is too short. Three business days is more reasonable.	25,27	Notification period changed to 72 hours after the start of the remedial action, except where MassDEP otherwise specifies.
Public Involvement/Note 7 Providing Notice to Owners of Properties that are Located within the Delineated Disposal Site	Agree that if such notification is to be required, then it makes sense to require that it be made with the submittal of the Phase II Report or RAO, whichever is sooner.	25,27	Comment is in agreement with the public hearing draft proposal and final amendment, which require notification at the time of the Phase II report or RAO, whichever is sooner.
	This notification seems redundant. If the disposal site boundaries are established by adequate sampling, then the property owners would have received notice under the proposed requirement to provide sampling results to property owners.	36	For large disposal sites (large groundwater plumes), samples may not have been taken at every property, but upgradient and downgradient sampling points may indicate that the disposal site boundaries encompass unsampled properties in between.



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	<p>Notices should be given at the end of the Phase I process because many key decisions are made during Phase II as to the scope of the assessment, it is vital that residents be notified and be part of the process before the Phase II begins. Individuals should know as soon as possible if they are in a known or suspected zone of contamination.</p>	32	<p>A complete delineation of the disposal site boundaries is not typically available at the end of Phase I, but is required at the end of Phase II or with a Response Action Outcome. The Department does not agree that notice related to a suspected zone of contamination should be given based on data that is available in Phase I. Phase I provides preliminary information about the disposal site boundaries that may be contradicted by a more complete Phase II study.</p>
	<p>Should be able to provide notice by posting if disposal site extends onto property with multiple owners (multi-unit, commercial property).</p>	37	<p>Department believes posting is not an adequate substitute for the written notice.</p>
	<p>Support notices of all parties that own property that is part of a Disposal Site.</p>	30	<p>Final amendment implements notice.</p>
	<p>The Department's comment in the Note to Reviewers that the proposal is not intended to affect a property owner's right to sue for damages brings confusion to what otherwise might be a useful bright line establishing when such claims begin to run. If this notice is the first "actual knowledge" that the recipient receives of the contamination, then the notice will have an effect on when the SOL begins to run. MassDEP should affirmatively withdraw this Note to Reviewers when the regulations are published.</p>	25,27	<p>MassDEP agrees that its statement in the Public Involvement/Note to Reviewers #7 is confusing. Since the Notes to Reviewers are not published with the final amendments, MassDEP cannot withdraw the note as part of the final amendments, as the comments suggest. MassDEP acknowledges as part of this written comment summary, however, that it had no intention in the Note to Reviewers to affect how/whether notice given to property owners within the boundaries of a disposal site triggers a SOL for damage claims or otherwise affects a property owner's legal rights.</p>
	<p>Support provision. It should remain clear that it is the PRP's responsibility to provide notification of a reportable condition as well as for the proper delineation of disposal site boundaries, regardless of property boundaries.</p>	29	<p>MassDEP agrees that the delineation of disposal site boundaries should be pursued beyond property boundaries as warranted by disposal site conditions and that going off-property to delineate boundaries is the responsibility of the party conducting response actions.</p>

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	Proposal should be expanded to also notify tenants and others who may be occupants of the property.	39	MassDEP did not expand the proposal as suggested. The additional notices suggested could be a substantial burden to the property owner and would not be tied to actual risk to tenants or occupants (there may be no exposure). The amendments to implement notification of "Affected Individuals" of IRAs conducted to address IHs or CEP conditions will provide notice to tenants/occupants who may be at risk from disposal site conditions or response actions.
	If notice is to occur, it should be at Phase II or at the time of RAO. Need to clarify notice that involves public rights of ways; notice to municipal property owners.	29	MassDEP will provide guidance on notice that involves public rights of way.
	As a resident living near a disposal site, supports providing notice to property owners within the boundary of a disposal site.	46	Final amendments implement the proposed notice.
Public Involvement/Note 8 Providing Notices to Owners of Properties that Abut a Delineated Disposal Site	The proposal is unreasonable and counterproductive. Will further stigmatize contaminated properties and make them more difficult to develop; will unnecessarily raise concern and result in calls to local and state officials that will tax resources; will depress property values and owners will have no redress; a property outside of the boundaries of the disposal site by definition is not impacted by contamination.	8,9,13, 22,25, 27, 29,34,35, 37,38,47	MassDEP has considered the objections to this proposal alongside the intended benefit of alerting property owners proximate to a disposal site of conditions that could potentially affect their property if a timely or proper cleanup is not conducted. This proposal has not been included in the final amendments.
	Do not support. PRPs and RPs will bear financial burden and notification will raise probability that resources will be diverted to civil suits related to diminution of property value. Notice could impede progress of cleanup.	34	

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	Strongly disagree with this proposal. If the disposal site is adequately delineated, the abutters are not at risk. Further, in highly developed areas determining the parties to notify represents a significant undertaking.	36	
	Requirement may be duplicative of notice provided in the newspaper. Requirement may not always be feasible and may place an unusual burden on the LSP and potentially responsible party.	39	
	Proposal is burdensome and counterproductive; may increase reluctance on the part of PRPs to investigate off-property impacts.	30	
	Support proposal to notify disposal site abutters because the impact of contamination on health issues and property value often does not stop at the border.	32	
	As resident living near a disposal site, supports providing notice to property owners to that abut disposal site boundaries.	46	
Public Involvement/Note 10 Providing Notices to Public Water Supply Owners of disposal sites where groundwater concentrations exceed GW-1 in a public water supply protection area	Support the proposal to notify public water suppliers. Recommend that the notice also be provided for disposal sites located within Zone B of a surface water supply.	26	<p>Final amendments implement a requirement to notify public water suppliers of disposal sites with groundwater concentrations above GW-1 in PWS resource areas. MassDEP did not expand the required notice to disposal sites in Zone B; Zone Bs encompass a large portion of the state and may be very distant from the public water supply intake. The notice is focused on disposal sites that have a potential to affect the supply. Broadening the notification area would make the notification less meaningful/useful.</p> <p>Proposal was modified in the final amendments to require additional notice to the public water supplier upon submittal of the RAO.</p>

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Public Involvement/Note 12 Notice to Local Officials prior to implementing a RAM	The proposed change for notice to local officials "within seven days prior to" implementing a RAM could present logistical problems with RAM implementation if bad weather caused rescheduling, which would require a new round of notification. Suggest keeping "within" language but lengthening window to within 14 days prior to implementation.	27	MassDEP has changed this requirement, to allow notification to occur <i>within</i> the 20 days prior to the RAM implementation, meaning that notification may be made <i>on</i> the day of implementation, therefore eliminating delay between the notice and conducting the RAM.
	MassDEP must eliminate the delay in RAM implementation that results from the requirement to notify local officials 7 days prior to implementing a RAM. Suggest same day notice or notice "within" the 7 days prior to the RAM.	23	
	Recommend keeping the "within" term but expanding to 14 days.	29	
	The proposed notice within 3 days prior to the RAM is not practical, since the LSP does not always control the schedule. Notice could be provided and then the RAM must be rescheduled.		
Public Involvement/Note 12 Notice to Local Officials includes summary of response action reports	Support change to provide local officials with summaries of response action reports instead of current notice of availability. Change is long overdue. This information is more meaningful to local officials, and coincides with efforts to generate local databases on potential brownfields development properties.	13,29,39, 47	Final amendment implements change.
	Support providing copy of Phase I site map with Tier Classification notification to local officials.	25,27	Final amendments implement requirement to include Phase I site map with notice to local officials.
	This change is not necessary and adds cost burden to PRPs. Local officials have informed commenter that they do not know what to do with the submittals they're currently receiving. These submittals may not be welcomed.	34	Municipal representatives to the public involvement work group requested and supported this change. MassDEP recognizes that different towns may have varying levels of interest in these summaries.

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	Strongly disagree with the proposal. It is likely the majority of this information would not be reviewed by local officials and would create storage problems.	36	Proposal calls for the use of report summaries already produced/required by the regulations; these should accurately/adequately convey conditions.
	Report summaries in lay terms may be confusing; not adequately convey conditions.	36	
Public Involvement/Note 13 Tier II Classification Public Comment Period	Object to requirement for public comment period for Tier II sites at tier classification; these are lower priority sites and additional process will have minimal benefit.	25,27,29	MassDEP has withdrawn the proposal to provide a public comment period on Tier II applications.
	This proposal provides a comment period but no requirement to respond to comments. Can a Tier Classification be resubmitted based on public comment, without penalty or a tier permit modification?	37	
	Do not oppose the comment period on Tier II applications. Do oppose providing local officials with Phase I site map; officials are unlikely to review this information and it will add to their storage problems.	36	Municipal representatives to the public involvement work group requested and supported this change. MassDEP recognizes that different towns may have varying levels of interest in these summaries.
Public Involvement/Note 14 Additional Public Involvement Activities for Preliminary Response Actions and Comprehensive Response Actions	This provision, in combination with other added public involvement requirements, will result in more delay; the public benefit is not worth the costs.	27	MassDEP did not expand these requirements to "any Preliminary Response Action or Comprehensive Response Action"; MassDEP did incorporate the proposed specifics on notice and comment periods related to the existing activities required for IRAs and RAMs.
Public Involvement/Note 19 PIP Withdrawal	Support the concept and support Option 2, that a majority of the people who signed an original PIP petition should be able to withdraw the petition.	25,27,29	Option 2 was incorporated into the final amendments.
	Recommend a third option in which the PIP petition can be withdrawn prior to development of a draft PIP provided it is no longer supported by the original petitioners. Requires the signatures of all of the original petitioners.	14	

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Public Involvement/Note 20 Various PIP Provisions	Concern raised about the proposal to expand the comment period on response actions from 10 to 20 days and the limitation of performing response actions until the comment period has run. Suggest the IRA comment period be shortened to ten days.	25,27	Final regulations allow for the IRA to be conducted prior to the end of the comment period if waiting until the end of the comment period would delay the timely implementation of the remedial action.
	Concern about the Note to Reviewers statement that petitioners may request additional public meetings. While it is reasonable to allow such request, requiring that the meetings be held in every case allows PIP participants to hijack the schedule/invites delays. Recommend that public meeting be limited to the achievement of specific milestones such as Phase reports and completion reports, but not status reports.	27	The regulations only require one meeting be held, i.e., the initial meeting to present the Public Involvement Plan.
	We believe that taking out the need for public meetings and other requirements will force residents to unnecessarily fight for basic information.	32	The proposal does not eliminate the public meeting requirement. There is flexibility beyond the initial PIP plan meeting regarding additional public meetings.
	Object to providing local officials with the ability to propose the termination of a PIP. Many time local officials are often at odds with residents and shouldn't be given the authority to unilaterally change the PIP.	32	In response to the concern expressed with the provision, a change was made to remove "local officials" from those who may propose change or termination of a PIP.
	PIP meetings should be limited to key milestones. Regulations should reflect that certain response actions, such as site investigation and testing, monitoring and operating a treatment system can occur during the public comment period.	29	Final amendments do specify response actions that can occur during the public comment period.
<b>Subparts I &amp; J &amp; Miscellaneous</b>			

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Subparts I & J & Misc/Notes 1 & 2 Imminent Hazard Evaluation. Two options given for identifying which sample should be used to determine whether the requirement to conduct an IH evaluation is triggered if more than one sample is taken in the top 12 inches of a site.	Option 1 is clearest (within 12"). The likelihood of having co-located samples within the top 12" is small and any soil within 12" is accessible. Option 2 allows opportunity to parse soil horizons.	5, 27,29,36	MassDEP incorporated Option 1 into the final amendments.
	Option 2 is preferred because contact with surface concentrations is more likely. We do not agree that two-hour notification is practicable.	14	
	Option 2 is clear and consistent with the stated intent. Current language should be modified to stipulate that selection of soil samples for use in IH evaluations depends on exposures being evaluated.	28	
	Option 2 best conveys the original intent of the section for 40.0321, but for the evaluation of imminent hazards (40.0953) Option 1 provides more flexibility - using all the data within the 12" layer since the larger data set would be more representative of potential exposures.	34	
	Option 2 is best. TSCA requirements often include up to 4 co-located samples in the top 12". The "emergency" should be for the most accessible soil -- as close to the surface as possible.	35	
Subparts I & J & Misc/Note 3 Reportable Concentrations for Chromium Use of Species-Specific Data	Concur with the use of species-specific chromium data.	27,29	Comment noted. MassDEP will adopt the regulations as proposed.
	Concur with the use of species-specific chromium data, but lowering the total chromium RC to 30 mg/kg (background in natural soil) may require reporting of false positives. Should keep Cr III and total Cr RCs equal and allow technical justification to explain why Cr VI is unlikely to be present at a site.	34	There would be no mechanism to review the technical justification if the decision is made to not notify, as the site would never come in to the MCP. Notification has to be black and white with minimal chance for misinterpretation.  MassDEP will adopt the regulations as proposed.

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Subparts I & J & Misc/Note 4 Reinstating provision that Hot Spot are considered distinct Exposure Points	Agree with reinstatement but suggest clarifying to ensure that appropriate exposures are evaluated under Method 3 and that small area/volume hot spots are not inadvertently used to evaluate all exposures.	28	MassDEP will reinstate the regulations as proposed. MassDEP will explore developing guidance to address the exposure evaluation issue.
	Hot Spots are not representative of what a receptor is actually exposed to and should not be defined to be Exposure Points.	14	
Subparts I & J & Misc/Note 5 Exposure Point Concentrations When to average, treatment of uncertainty (310 CMR 40.0926)	Request more explicit procedure for generating EPCs - probably in guidance not regs.	3	MassDEP concurs that additional clarification is best provided in guidance, as the approach will require site-specific flexibility and professional judgment.
	Language for use of maximum values for "lethal or severe effects from short-term exposures" is vague and unnecessary given max values are already required for acute exposures (40.0926(3)(a)(1)). If there are specific compounds of concern to MassDEP, they should be listed in the IH notification section (40.0321).	27,29	MassDEP believes the language reinforces and explains the need to use maximum values. While somewhat redundant it is not unnecessary.
	Suggest language to also address Hot Spots explicitly, rather than by reference. Even the existing MCP appears to give more latitude in determining EPCs for small area/volume Hot Spots -- not automatically defaulting to a maximum value. See suggested approach.	28	There is language explicitly dealing with Hot Spots at 40.0926(5) that does not default to maximum values. MassDEP believes the proposed language does not limit existing flexibility but clarifies conditions under which the general rule of using an average value is not appropriate.
	40.0926(3)(b)(1) - unclear why a factor of 10 is used here when 100 would be consistent with the definition of "hotspot", already requiring the use of a distinct EPC. Also, it is ambiguous and confusing to reference "risk-based concentration limits" since 40.0926(3)(b)(2) already addresses the use of the mean under Method 3.	27,29	The factor of 10 here is not related to Hot Spots. It is a rule-of-thumb on how to take into account variability within the data set. The regulations allow for technical justification for conditions that do not meet this criterion.  (Note the factor of 10 is in the current regulations and is not proposed to change.)



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	Language should be revised to say that the demonstration " <i>should include</i> " (not " <i>may</i> ") consideration of the observed data distribution, etc. Retain the application of LSP professional judgment concerning the content of the demonstration.	34	The final language will say " <i>should include</i> ".
Subparts I & J & Misc/Note 6 Groundwater Categorization Construction of a Building	We believe the language "and may negate the notification exemptions described at 310 CMR 40.0317(17)" should be struck. The RCs GW-2 for these groundwater areas already takes this potential exposure into account.	29	Final amendments incorporate change as proposed. Under the notification exemption, 40.0317(17), the RCs would not come into play necessarily for a site where a Class A or B RAO has already been achieved, unless new exposure conditions <i>potentially</i> created by the construction of a building were taken into account.
	The proposed language does not provide a trigger for evaluating the vapor intrusion pathway once a building is constructed at such a site. In order to close the loophole, the provision should state that if groundwater is present at depths less than 15 feet below grade, it should be considered a current and/or potential source of vapors to indoor air, unless LSP can provide justification that conditions prevent future building construction or an AUL is implemented to prevent such use.	34	While the regulations do lack an explicit trigger for evaluating this pathway, it is MassDEP's position that notification would be required if the new construction negates the condition upon which the RAO is based (i.e., new exposure pathway is created). If, however, the potential for such a pathway is eliminated through incorporation of a vapor barrier or venting system in the building construction, the notification exemption could be maintained.
Subparts I & J & Misc/Note 7 Selection of Method	Very low levels of VOCs should not trigger soil gas/indoor air sampling. There should be a simple way to screen out this pathway, either by setting a minimum concentration or requiring the LSP to address it one way or another and provide documentation of his/her determination.	34	Calculations to identify generic levels in soil for this pathway resulted in values so low that persons commenting on previous versions of this text recommended allowing LSPs flexibility to provide site-specific justification to include/exclude this pathway.  The regulations will be adopted as written, which MassDEP believes provides the flexibility requested in the comment.

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	Also should add requirement to look at soil to indoor air or trench pathway under Method 3 as these are often ignored.	3	MassDEP believes that this requirement, along with additional training and guidance, will increase the understanding of this pathway. MassDEP does not believe additional requirements for Method 3 are necessary at this time.
	Agree LSP should evaluate the potential soil to indoor air pathway, but explicit triggers shouldn't be listed in the MCP unless there is a scientific basis for them. Alternative language is suggested.	27,29	The current regulations include more general language about evaluating the soil to indoor air pathway at 40.0942(1)(b). The more general requirement has proven to be inadequate in terms of directing parties to evaluate this migration pathway.
	MassDEP should allow for incorporation of site-specific hydrogeologic and building parameters in developing Method 2 GW-2 standards.	27	MassDEP agrees, but we believe the flexibility is already present. The specific citation (40.0983(2)(c)) addresses creating new Method 2 standards as MassDEP would create them. There is a follow-up section (40.0986) that allows the incorporation of site-specific inputs.
	Language is too prescriptive and differs from the distances defining the GW-2 area. Radii of influence will vary by soil type and building construction. Guidance would be better.	29	MassDEP intends to provide additional guidance and training on this area, but believes that explicit triggers are necessary to elevate awareness of this pathway.
Subparts I & J & Misc/Note 8 Imminent Hazard Evaluations	Changing HI from 10 to 1: For lead in particular, IEUBK models are geared to long term, not short term or acute exposures. Further, there's no current trigger level for lead in soil as an IH. In drinking water systems, the lead is likely to come from the pipes, not the water source. Recommend retaining HI=10 for lead.	29	Lead IEUBK models assume equilibrium is reached in as short a time as 3 months, sufficient for an Imminent Hazard evaluation. Lead in drinking water from pipes would not be part of the MCP evaluation.

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	<p>If the RfDs already include safety factors, it is unclear why an additional safety factor is needed to bring the HI to 1 rather than 10.</p>	<p>34</p>	<p>If a chronic RfD incorporates an uncertainty factor of 10 to account for subchronic-to-chronic extrapolation, it may be appropriate to identify a subchronic or acute RfD (without that factor) for the Imminent Hazard evaluation.</p> <p>MassDEP is concerned with the prospect of allowing exposure at 10 times the allowable (acute) level to a chemical with known health effects following short-term exposure.</p>
	<p>Public water system detecting lead &gt; 15 or perchlorate &gt; 1 would trigger an IRA under the MCP. Does this circumvent the notification exemption for water suppliers at 40.0317(11)? Inconsistent with Lead &amp; Copper Rule. Would each home now become a waste site? MassDEP Drinking Water Program adequately regulates water suppliers.</p>	<p>26</p>	<p>MassDEP has eliminated the proposal to publish Imminent Hazard criteria for substances in drinking water.</p>

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	<p>Why these three? Lead, perchlorate and cyanide? Lead isn't even a short-term toxicant, as it needs repeated exposure over a fairly long period of time.</p>	28	<p>MassDEP singled out cyanide, lead and perchlorate based on practical experience. These contaminants have often been the focus of imminent hazard evaluations. Although elevated concentrations of cadmium and a number of other contaminants may pose as great a health risk, sites with imminent hazard levels of cadmium are not common.</p> <p>In any case, after further consideration of the initial proposal and the comments, MassDEP has decided to withdraw the imminent hazard levels proposed in the Draft MCP revisions. In their place, MassDEP has drafted a proposed narrative rule for identifying chemicals and exposure routes for which the current general approach (hazard index of 10) is clearly not sufficiently protective. The language is generic, and a list of contaminants to which the exception applies will be published by ORS elsewhere.</p> <p>Perchlorate has been dropped from this package of regulations.</p>
	<p>Instead of setting a HI=1 for lead Imminent Hazards, MassDEP should set a concentration in soil. Just setting a HI will result in costly burdensome risk assessments.</p>	37	<p>MassDEP believes that an express Imminent Hazard level for lead in soil would be confusing given the notification exemptions for lead (lead paint). The revised regulation clarifies decision rules for Imminent Hazard evaluations at sites already in the MCP process. The regulations do not establish any more of an obligation to conduct such evaluations than currently exists.</p>
<p>Subparts I &amp; J &amp; Misc/Note 9 Development of Method 2 Standards</p> <p>Risk - gardening</p>	<p>Support language for Method 2 limiting gardening pathway to those chemicals for which it is evaluated under Method 1. Perhaps state same rule for Method 3 regarding when it is necessary to look at gardening pathway, e.g., for arsenic or PCB sites at a residence.</p>	3,27,29	<p>MassDEP concurs that more explicit guidance is needed for the evaluation of gardening pathway under Method 3. A statement in regulation is unnecessary, however.</p>

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	It is not clear how the gardening-pathway values for some metals and PCBs will be used, since the uptake levels are based on the land application of sludge regs. The values are also below many of the MassDEP background levels. In addition, the uptake factors appear to be more conservative than other estimates. More detail is provided.	14	
Subparts I & J & Misc/Note 9 Development of Method 2 Standards	GW-2: Allow site-specific parameters to be used rather than conservative MassDEP defaults. Language suggested.	27	There are two types of Method 2 evaluations. This comment springs from the section (40.0983) that describes how to create standards for chemicals without Method 1 standards, <i>in a manner consistent with the Method 1 standards</i> .  The flexibility requested in the comment does exist in section 40.0986.
	GW-2: Inclusion of the "d" factor in the rule facilitates justification of such a factor in other risk characterization methods. The algorithm may not be correct given MassDEP's notes.	28,29	The "d" factor for petroleum compounds is based on observed differences between site conditions and model predictions, with a theoretical explanation (biodegradation) that the model doesn't address.  The algorithm has been reviewed and is correct.
	Consideration should be given to both the soil type used in setting the GW-2 standards as well as increasing the soil-water-filled porosity. The MassDEP default value is at the low (conservative) end of the range.	34	The Method 1 standards are intended to be conservative. Site-specific considerations (such as soil type and soil-water-filled porosity) can be used with appropriate documentation under Method 2 (40.0986) or Method 3.
	The equations for developing Method 2 standards reference USEPA toxicity values, contradicting the proposed change to give MassDEP values primary consideration.	34	The final version will be revised to reflect the comment.
	GW-3: The equations for creating GW-3 standards should also include the chemical-specific attenuation factor used in Method 1. Currently it just lists the "d" dilution factor.	34	The final version will be revised to reflect the comment.

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Subpart I & J & Misc/Note 12 Exemptions from the UCLs for common, relatively nontoxic metals found in the environment with wide ranges of concentrations	Support clarification proposed for chemicals for which UCLs don't apply.	27, 29,36	Comment noted.
	Also suggest adding the following chemicals to the list to which UCLs don't apply: zinc, magnesium, molybdenum and manganese.	28	MassDEP believes that expanding the list to include these chemicals is not justified at this time.
Subparts I & J & Misc/Note 15 Private Well Closure	Support the proposed change.	5,8, 27	MassDEP made the change as proposed and required the use of the Notice of Activity and Use Limitation if the existing well is being maintained for non-potable use.
	Support elimination of the Grant requirement. Support Option 2 that requires a Notice of Activity and Use Limitation apply if the existing well is taken out of use as a potable water supply but maintained for other uses.	5,27,30	MassDEP made the change as proposed and required the use of the Notice of Activity and Use Limitation if the existing well is being maintained for non-potable use.
	Support proposal to eliminate the Grant requirement. Do not support the requirement to implement a Notice of AUL, however, if the well is maintained for non-potable uses. Proper checks and balances are in place at the local level to prevent the improper re- conversion of the former well to potable use. In addition, the AUL will likely impact the property value.	34	The issue MassDEP is trying to address with maintaining the use of a Notice of AUL if the well is maintained for non-potable uses is not just the improper reconversion of the well to potable use by some future owner, but also providing information to some future owner about the status of well and the uses for which it is/is not suitable. The provision does not create any new impact on property value, since that issue existed with the Grant and the Grant was required whether or not the well was maintained. With the amendment, the property owner has the option to remove the well from service for any use, in which case no Notice of AUL would be required.

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	Support use of Notice instead of Grant, but do not agree with allowing continued use of supply for non-potable purposes – will continue to draw contamination and too easy to mistake for potable supply.	1	Continued use of the well as a non-potable supply was already provided under the existing Grant.
	Support the change, but feel both options could be appropriate – no AUL if the well is decommissioned and implement AUL if the well is retained for other non-potable use.	29	Comment description of preferred approach is consistent with the final amendment – a Notice of AUL is not required if the well is fully dismantled; it is required if the well is maintained for non-potable use.
	The change 40.1074(1)(d) appears to negate the proposed change at 40.0932 that would permit the use of an AUL to prohibit potable groundwater use of a decommissioned private well.	29	The change at 40.0932 does not prohibit the use of groundwater for the purpose of changing the groundwater category (as prohibited by 40.1074(1)(d)). The groundwater category is changed by the decommissioning of the well and tying the property to a public supply. The AUL is required, if the private well is retained for non-potable use, to provide notice that the well is non-potable. But the AUL is not the basis for the change of groundwater category.
Subparts I & J & Misc/Note 17 Use of Caps and Engineered Barriers	Existing performance standards (No Significant Risk, no feasible alternatives) are sufficient to limit when/where an Engineered Barrier may be used. Should not preclude Engineered Barrier use at a residential site or where “highly toxic” or “lethal” contaminants are present.	25	Final amendments do not implement new limits on when or where an Engineered Barrier may be used.
	Restrictions on the use of Engineered Barriers when highly hazardous material are redundant; addressed by existing performance standards. MassDEP needs to be careful not to encumber Brownfields sites with such restrictions on Engineered Barriers. Engineered Barriers allow for the safe and successful redevelopment of Brownfields. Restrictions on their use could adversely impact the overall objective of preserving open space.	34	

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	Support the PE review requirement for Engineered Barriers, but not necessary for other caps and barriers.	34	MassDEP did not implement the PE review as a requirement. MassDEP intends to address the appropriateness of such review in the Engineered Barrier policy.
Subparts I & J & Misc/Note 18 Use of Caps and Engineered Barriers	As written, the provision contradicts MassDEP's expressed opinion on allowing consolidation of ACM where other feasible alternatives exist. MassDEP should reword to allow capping of ACM in soil without needing to demonstrate a lack of a feasible alternative.	25, 27	MassDEP believes the lack of a "feasible" (which considers risk as well as cost) alternative could be demonstrated in the case of ACM in soil. This will be addressed in ongoing Asbestos in Soil policy development.
	Strongly recommend keeping existing language that allows for the selection of a remedy that employs on-site isolation of oil and/or hazardous material under a barrier as it compares favorably to other alternatives based on effectiveness, costs, risk reduction, timeliness, etc. Proposed change would require that there be a "lack of a feasible alternative" before a barrier could be selected as a remedy.	14	Barrier may still be selected as a remedy if an evaluation shows other alternatives to be "infeasible". "Feasibility" as defined in 21E and implemented in the MCP provides for considering cost and weighting of costs and benefits. MassDEP believes the regulations still provide sufficient flexibility in terms of selecting and implementing an on-site disposal. The regulations are, however, intentionally weighted against on-site disposal where other alternatives are available and "feasible".
	The proposed changes make sense where the UCL exceedances are at the surface. However, it is still confusing whether these changes apply to all cover systems where UCLs are not exceeded or just Engineered Barriers.	34	The feasibility language is intended to apply to all types of caps, including Engineered Barriers.
Subparts I & J & Misc/Note 19 Data Usability Evaluation	Object to proposed language as unnecessarily heavy-handed, given the existing RAP requirements and data validity requirements. MassDEP has indicated that guidance will be developed and made available by the effective date of the provision.	27	MassDEP incorporated the proposal into the final amendments. MassDEP believes the requirement that LSPs specifically discuss the veracity of the data used to support RAO Opinions is reasonable and warranted; existing RAPs provision does not require an affirmative statement regarding data usability. The Department still intends to develop guidance for the content and scope of the data usability evaluation by the effective date of the



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			provision.
Subparts I & J & Misc/Note 22 Pilot Test Definition	Suggest that the feasibility of NAPL recovery be allowed as part of a Pilot Test.	27	MassDEP expanded Pilot Test to include NAPL recovery and expanded the duration of the test from 7 to 21 days.
Subparts I & J & Misc/Note 23 VOC definition	MassDEP should reference the MA Compendium of Analytical Method 8260B instead of USEPA's method 8260; proposal is inconsistent with the MA Compendium of Analytical Method.	27,29	Agreed. Changes made.
Subparts I & J & Misc/Note 24 MassDEP's authority to reject or require modification of any submittal it determines does not meet requirements	Do not support this provision. It appears that MassDEP is intent on continuing to unilaterally enforce its authority on parties without any form of due process. An RP, PRP, or Other Person should be given an opportunity to present information in support of actions taken prior to MassDEP's rejection or requirement to modify a submittal.	25,27	This provision articulates MassDEP's current authority to enforce the regulations and does not represent a shift. MassDEP incorporated the provision into the final amendments.
	Do not support. The current audit provisions that allow "due process" to occur adequately address MassDEP's concerns.	29	
Subparts I & J & Misc/Note 25 Electronic submittal grace period	Clarify that 14 day grace period applies when submittal is received electronically, and does not apply when submittal is made entirely by paper.	3	Clarification made. More guidance can be provided as MCP Q&A or in the form instructions.
Subparts I & J & Misc/Note 26 Elimination of grace periods for all submittals.	Do not drop grace periods. MCP system is already unnecessarily difficult to manage with regard to deadlines.	36,38,39	The grace period has been retained.
Subparts I & J & Misc/Note 29 Remediation Waste	Clarify that this provision does not change the ability to manage and consolidate Remediation Waste on the disposal site. Clarify that this provision only applies to material that is to be removed from the disposal site.	27, 29	Clarifications made.
	Change "remediation waste" to Remediation Waste.	27	Change made.

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	<p>This change is not necessary; already covered by 40.0034. Provision will lead to confusion about the timeframes for removing containerized waste, because some readers will not realize that Remediation Waste (as defined in 40.0006) does not include containerized waste.</p>	<p>14</p>	<p>40.0034 is not adequate to cover this issue, as 40.0034 only applies to materials moved under an MCP Bill of Lading. 40.0031(1) is a general provision that also applies to Hazardous Waste Manifests.</p>
<p>Subparts I &amp; J &amp; Misc/Note 34 Response Action Performance Std Dilution of contaminated media</p>	<p>Change would disallow the current risk-reducing practice used to address soils with pesticide residuals (e.g., in former orchards) of mixing clean soils with shallow soils.</p>	<p>8,13,47</p>	<p>Properly applied pesticides are not considered releases. The practice described, therefore, does not fall under the MCP and would not be subject to the RAPs amendment.</p>
<p>Subparts I &amp; J &amp; Misc/Note 42 Allows waiving 45-day notice of AUL to record interest holders</p>	<p>MCP currently requires 45-day notice to all record interest holders prior to the recording or amendment of an Activity and Use Limitation. This time period can cause unnecessary delays. Suggest shortening the time period to 15 days.</p>	<p>25,27</p>	<p>MassDEP will make change to allow for the waiver of 45-day notice period. While MassDEP feels it is worthwhile to seek comment on shortening the time period (in addition to providing the waiver), the Department feels that such a change warrants soliciting broader public comment. MassDEP agrees to incorporate such a proposal into a separate MCP public hearing draft.</p>
<p>Subparts I &amp; J &amp; Misc/Note 43 Clarification that an AUL may be applied voluntarily to provide notice of groundwater contamination when the notice is not being used to change the groundwater category</p>	<p>Voluntary use of an AUL to provide notice of limitations on groundwater use should be allowed (consistent with proposal).</p>	<p>39</p>	<p>Amendment implemented as proposed.</p>
<p>Subparts I &amp; J &amp; Misc/Note 46 Addition of AUL forms 1084D and 1084E</p>	<p>Spelling error in the title of Form 1084E ("Envirommental").</p>	<p>30</p>	<p>Spelling was corrected.</p>
<p>Subparts I &amp; J &amp; Misc/Note 49 Delete reference to "original" signatures on Bills of Lading to facilitate electronic submittal.</p>	<p>Amendment supported; will make BOL more streamlined.</p>	<p>36</p>	<p>Final amendment incorporates change.</p>

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<b>Numerical Standards</b>			
NOTE: Based on the Department's review of comments received on the proposed MCP Numerical Standards, a number of the standards will be resubmitted for public comment. Public comment will be sought in three separate public hearing draft proposals focusing on (a) perchlorate, (b) asbestos, and (c) Method 1 standards that were significantly revised following the Fall 2004 Public Hearing Draft. For the purpose of identifying chemicals (in addition to perchlorate and asbestos) to resubmit for public comment, significant revisions were defined as standards that changed by a factor of 5 or more (up or down) from the Fall 2004 public hearing draft, and chemicals for which standard changes were not previously proposed in the Fall 2004 public hearing draft.			
Numerical Stds/Assumed Exposure Duration	Based on USEPA data, MassDEP should adopt an exposure duration of 9 years for residential exposures.	27,29	USEPA Exposure Factors Handbook presents 30 years as the 95 <sup>th</sup> percentile value for length of time spent in one residential location [USEPA Exposure Factors Handbook, Volumes I – III, Office of Research and Development, National Center for Environmental Assessment, EPA/600/P-95/002F, August 1997]. USEPA Region I routinely uses this value for higher-end exposures considered in most cleanup decisions. Years ago, MassDEP reduced the default residential exposure period from 70 years to 30 years to be consistent with USEPA. The use of a high-end rather than a mid-range value for an exposure factor that reflects personal choice (as opposed to physical characteristics such as body weight and skin surface) is consistent with 310 CMR 40.0923, which states: "The selection of site specific exposure frequency and duration should be representative of the full extent of site activities consistent with the identified site use." It is also consistent with 310 CMR 40.0920, which states: "The identification of receptors, Site Activities and Uses . . . shall be conducted in a manner which provides a conservative estimate of the exposure to oil and/or hazardous material which a receptor may receive within the contaminated area over period of time." Risk assessment assumptions and the resulting cleanup decisions should protect a resident who might choose to remain at one location for an extended period of time. Considering patterns that can be observed in many MA neighborhoods, the

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			thirty-year exposure period is appropriate and adequately protective.
Numerical Stds/Note 2 Use of USEPA Cancer Slope Factors and/or Unit Risk Values	Using an lower HQ (0.1) to account for Class C carcinogens is not standard protocol. Options 1 and 2a are preferred, including use of IRIS slope factors for Class C carcinogens	14	Comments noted. MassDEP will eliminate this provision from the final regulations. No change from current practice will be proposed.
	Option 1 is best choice; use IRIS values where available. Using RfD with additional safety factor is not intuitively understandable and would overestimate potential noncancer risks while leaving cancer risk unaddressed.	34	
Numerical Stds/Note 3 RDX Toxicity	Support a value of 2 µg/L based on new Cancer Slope Factor from re-evaluation of original mouse study.	28	The RDX standards have been removed from this package of regulations and will be resubmitted for public comment.
Numerical Stds/Toxicity Values  Hierarchy of values	Hierarchy of toxicity values should match USEPA's for CERCLA sites, including peer review for Tier 3 values.	14, 34	MassDEP occasionally develops toxicity information for chemicals that USEPA has not addressed, chemicals for which the USEPA values have been withdrawn, or in situations where MassDEP believes a different value is appropriate based on an independent review of the science.  Where such MassDEP-derived values exist, it is appropriate to give their use primary consideration for implementing a MassDEP regulatory program.
	RAPs stipulates using the best science and IRIS represents the best toxicity values available. By stipulating use of MassDEP values, we may force an LSP to violate RAPS. In the absence of IRIS values, alternative sources, including but not limited to MassDEP should be considered. Delete this requirement.	28	
	Some MassDEP values (e.g., TCE and PCE) have new studies since MassDEP developed them in the early 1990's. Preference should be given to the USEPA values, given MassDEP's limited resources to keep current while USEPA has entire sections dedicated to this.	27, 29	

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	MassDEP should be clear what it means by "toxicity information developed by MADEP". Compare the ORS publications web site to the IRIS web site, which is clear with well-documented values. See discussion in comments for examples of possible difficulties if MassDEP values are given primary consideration.	34	
Numerical Stds/RDX, HMX and perchlorate	Support MassDEP establishing standards for RDX,HMX and perchlorate	48	Comment noted.
Numerical Stds/Indoor Air Background	Request internal consistency among MassDEP regulations and guidance documents on indoor air.	27	MassDEP agrees that inconsistency can create confusion and compromise a PRP's ability to satisfy regulatory requirements. MassDEP will review and update indoor air guidance as appropriate.
Numerical Stds/MCP Toxicity.xls spreadsheet	The toxicity spreadsheet should be updated before finalization.	27	MassDEP agrees and the ORS has been updating the spreadsheet over the past several months. The updated spreadsheets will be released along with the final standards.
Numerical Stds/Reportable Quantity for Mineral Oil Dielectric Fluid	MassDEP should increase the reportable quantity for mineral oil dielectric fluid from 10 to 25 gallons, as recommended in MassDEP's Generic Environmental Impact Report. This change will keep minor releases out of the 21E system without compromising environmental protection.	21	MassDEP agrees with recommendation. The RQ for MODF has been raised to 25 gallons in the final amendments.
Numerical Stds/Cyanide	The cleanup standards refer to Physiologically Available Cyanide, while the MOHML refers to "free". Clarity will lead to consistency.	37	The Massachusetts Oil and Hazardous Materials List (MOHML) includes many forms of "cyanide", including a general reference to the anion and specific cyanide compounds. Laboratory analyses generally measure cyanide gas (HCN) formed during the analysis, not the original cyanide compound. Thus the notification requirement is applicable regardless of analytical method used. (The Department does not specify analytical methods prior to reporting. ) In contrast, the cleanup requirement allows for use of the Physiologically Available Cyanide (or Total Cyanide) results to insure any residual contamination poses No

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			Significant Risk of harm to health.
Numerical Stds/Dioxin	Dioxin standard may be based on USEPA TEF values, not DEP ORS 1991 TEFs. These may give proposed value higher than 20 ppt.	4	While the concerns about the application of different TEF values are valid, MassDEP believes that the information and the approach used to set the background dioxin level are appropriately conservative, given the available information, for the Method 1 standards and background screening.
Numerical Stds/Documentation	While the spreadsheets for the standards were available, review was slowed by inadequate documentation, e.g., lack of specific references for plant uptake values and the leaching DAFs.	28	MassDEP is in the process of finalizing the documentation of the numerical standards, including the sources/derivation of the specific plant uptake values used for the standards.
	While extensive backup information is provided to reviewers in multiple documents, better referencing in the notes to reviewers in the primary document would improve clarity and transparency.	14	Comment noted.
Numerical Stds/General	<p>MCP cleanup standards should be in harmony with USEPA standards. MassDEP is lowering standards without consideration of residual risk or cost to achieve lower levels. This will adversely effect Brownfields development.</p> <p>Where current standards are lower than those of USEPA or other states, MassDEP should raise them, except where there is real risk to the population when considering future site use and likelihood of exposure.</p>	19	<p>Although USEPA has published Preliminary Remediation Goals (PRGs) and similar guidance values (<a href="http://www.epa.gov/superfund/resources/soil/">http://www.epa.gov/superfund/resources/soil/</a>, <a href="http://www.epa.gov/reg3hwmd/risk/">http://www.epa.gov/reg3hwmd/risk/</a>, and <a href="http://www.epa.gov/region09/waste/sfund/prg/">http://www.epa.gov/region09/waste/sfund/prg/</a>), they have not promulgated cleanup standards. USEPA has a risk-based process for calculating cleanup goals that corresponds with Method 3 Assessments. Some assumptions used by USEPA are more conservative than MassDEP's, and some are less conservative. Many of MassDEP's proposed standards are, in fact, higher than other state and federal standards or guidelines. Each state or federal regulatory program has a different approach to the assessment and cleanup of sites, resulting in different program</p>

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			<p>elements, including differences in cleanup standards.</p> <p>The Method 1 standards are risk-based, therefore cost is not considered in setting Method 1 Standards. Cost is explicitly considered in the <i>feasibility</i> of implementing remedial action alternatives, not the risk characterization.</p>
Numerical Stds/GW1	The assumption of children taking 40 minute showers every day appears excessive.	27,29	<p>The shower duration value of 40 minutes is the 95<sup>th</sup> percentile value presented in the Exposure Factors Handbook [USEPA Exposure Factors Handbook, Volumes I – III, Office of Research and Development, National Center for Environmental Assessment, EPA/600/P-95/002F, August 1997]. MassDEP believes a high-end value for exposure factors that reflect personal choice is appropriate.</p> <p>Further, although dermal and inhalation exposures from showering are quantified, these exposures from other potable water uses (dishwashing, hand washing, housecleaning) are not explicitly evaluated. Using a high-end shower duration indirectly addresses the total exposure to contaminants in potable water.</p>
Numerical Stds/GW1	GW-1 assumes daily exposure 52 weeks/year versus 50 weeks/year for other standards.	27,29	<p>All residential exposures included in the Method 1 Standards assume exposure for 52 weeks per year. This is consistent with 310 CMR 40.0923 (1)c, which states: The selection of site-specific exposure frequency and exposure duration should be representative of the full extent of site activities consistent with the identified site use. Considering that many residents do not leave their homes for two weeks per year, the Method 1 Standards do not incorporate a vacation assumption.</p> <p>The 52 week exposure is also consistent with the USEPA and MassDEP derivation of MCLs.</p>
Numerical Stds/GW1	The dermal absorption factors used need to be better described and documented, particularly for	28	MassDEP is in the process of developing more detailed documentation, in the near term, through the

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	those chemicals falling outside the predictive domain.		revised Drinking Water Shortform explanatory notes and the User's Manual for the Drinking Water Shortform. The dermal exposure from showering assessment will be documented in the updated Method 1 Standards documentation.
Numerical Stds/GW2	The alpha value calculated for GW2 already includes the Henry's Law Constant (HLC). Subsequent application of HLC in the MassDEP equation, although consistent with USEPA model, represents double counting and should be removed.	7, 27	The HLC is used twice because it is required both in the development of alpha (to model movement through the capillary zone) and in the MassDEP equation to model movement from groundwater into the capillary fringe.
Numerical Stds/GW2	USEPA Vapor Intrusion Guidance does not allow calculating groundwater levels below MCLs. Be consistent with USEPA and raise levels to MCL.	14	The comment describes a risk-management decision by USEPA to artificially restrict their vapor-intrusion-based guidelines. MassDEP does not see justification for USEPA's decision and believes that it is inconsistent with the MCP's risk-based approach. The derivation of MCLs does not quantitatively consider volatilization from in-home use of water. It is inappropriate to conclude that the levels are protective for the vapor intrusion pathway.
Numerical Stds/GW2	Changes for the chlorinated hydrocarbons are not justified, particularly for TCE and PCE. The lowering of these standards will lead to more Class C RAOs. More ground-truthing/case studies would help.	38	The lower GW-2 standards for chlorinated hydrocarbons are based on an evaluation of vapor infiltration by Fitzgerald and Fitzpatrick [ Fitzpatrick, N.A. and Fitzgerald, J.J. 1996. <i>An Evaluation of Vapor Intrusion Into Buildings through a Study of Field Data</i> . Presented at the 11th Annual Conference on Contaminated Soils University of Massachusetts at Amherst. October 1996] and the USEPA's implementation of the Johnson & Ettinger model. The lower standards may result in more remediation, more Method 2 or Method 3 evaluations to determine site-specific levels, and/or more Class C RAOs, depending on specific circumstances. MassDEP believes this change is warranted by the potential risks posed by chlorinated hydrocarbons in shallow groundwater.



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Numerical Stds/GW2	Request that the implementation of the GW-2 standard for PCE be delayed until questions about the Unit Risk factor for PCE can be resolved.	27	MassDEP's Office of Research and Standards (ORS) has reviewed and will continue to review studies for PCE as they become available. MassDEP, however, sees no compelling evidence to revise the PCE Unit Risk Value at this time.
Numerical Stds/GW2	MassDEP should be consistent in its use of background levels and clear in the hierarchy of use.	27,29	Unfortunately there is no one comprehensive source of indoor air background data. MassDEP's use of the available data sets is described in guidance.
Numerical Stds/GW3	GW-3, Acenaphthene - referenced source doesn't contain information on this chemical and there's a more recent update.	5	<p>The comment is correct in stating that the source cited for the acenaphthene value is incorrect. The correct reference for the chronic value of 23 ug/l used for the GW-3 acenaphthene standard is the January 1996 Eco Update (titled Ecotox Thresholds). That tabulated summary references:</p> <p>USEPA. Sediment Quality Criteria for the Protection of Benthic Organisms: Acenaphthene. September 1993.</p>
Numerical Stds/GW3	<p>GW-3, Acenaphthylene - source of information is not cited ("median of phytotoxicity-based values for PAHs").</p> <p>GW-3, C11-C22 Aromatics - source of information is not cited ("median for individual PAHs").</p>	5	<p>For PAHs with no available toxicity data, the median phototoxicity-based concentration for PAHs was used. The references are cited for each of the PAHs with surface water benchmark values.</p> <p>The median photo toxicity value for C<sub>11</sub>-C<sub>22</sub> aromatic hydrocarbons is the value for benzo(k)fluoranthene. The reference is:</p> <p>Newsted, J.L. and Giesy, J.P. 1987. <i>Predictive models for photoinduced acute toxicity of polycyclic aromatic hydrocarbons to Daphnia magna</i>, Strauss. Environmental Toxicology and Chemistry. (6): 445-461.</p> <p>The average (mean) value for all PAHs, rather than the (lower) median value, was used as a surrogate for the C11-C22 aromatic fraction.</p>

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Numerical Stds/GW3	<p>GW-3 standards for mercury and methyl mercury seem to be under protective. Same value is used for both and reference notes that the value may be under protective if a substantial portion is methyl mercury. Having separate standards for the two also essentially doubles the allowable level.</p>	5	<p>MassDEP agrees with the comment. The USEPA NAWQC acknowledges that if a substantial portion of the mercury is available as methylmercury, then the criterion will probably be under protective. However, the GW-3 standard is based on the best available current information, and MassDEP does not anticipate changing the GW-3 value until better information is available. The reference for NAWQC values should be listed as USEPA 2002 and will be changed.</p>
Numerical Stds/GW3	<p>Xylene number based on avoidance effect of juvenile Coho salmon. I have not seen any Juvenile Coho Salmon around and am not aware of any fish kills since the standards were set in 1993. People can drink xylenes at a much higher level than the proposed GW-3 standard.</p> <p>Neither the MassDEP cost benefit analysis nor the coho salmon study provided any details concerning the costs and benefits of the proposed 100-fold decrease in the GW-3 groundwater category standard for xylenes.</p>	16,31	<p>Aquatic toxicity data are only available for a small fraction of species that occur in Massachusetts. Because most species occurring in Massachusetts lack aquatic toxicity data, MassDEP utilizes data from all available species (including non-native species) in order to have as large a data set as possible, and to attempt to be protective of species in Massachusetts that have not been quantitatively evaluated.</p> <p>MassDEP believes that avoidance behavior is an appropriate endpoint for use in a regulatory standard. Avoidance behavior is a well-established endpoint in aquatic toxicology and is considered a significant effect. It is an ecologically significant effect when fish will avoid passing through a portion of a water body and could significantly effect utilization of habitat, migration, and spawning. It is particularly of concern in smaller streams where avoidance may not be possible. Anecdotal evidence that mass fish kills are not occurring under the current standard is not an appropriate basis for setting a regulatory standard.</p> <p>Toxicity data on which the xylenes standard is based was identified using the same procedure as that applied to other chemicals. MassDEP reviewed the 1994 version of the USEPA's AQUIRE database to identify the lowest toxic concentration reported. MassDEP also reviewed the study from which that</p>

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			<p>value was obtained to confirm that the study was technically sound.</p> <p>The Method 1 standards are risk-based, therefore cost is not considered in setting Method 1 Standards. Cost is explicitly considered in the <i>feasibility</i> of implementing remedial action alternatives, not the risk characterization.</p>
Numerical Stds/GW3	<p>The GW-3 standard for xylene is based on the lowest observed effect concentration (LOEC) rather than the EC50 as noted in the spreadsheet.</p> <p>Study for xylenes is not necessarily appropriate for defining groundwater criteria [see discussion for comments above]. Recommend considering additional studies when determining an ecological endpoint for xylenes.</p>	29,34	<p>ORS will correct the spreadsheet to show that the target groundwater concentration is based on a LOEC.</p> <p>With regard to the use of concentrations based on avoidance, MassDEP agrees that avoidance can be a sensitive endpoint, and that it can vary among life stages and species. MassDEP believes this potential for variability warrants an appropriately conservative approach. While avoidance may not equal toxicity, avoidance behavior is a well-established endpoint in aquatic toxicology and is considered a significant effect. MassDEP believes that avoidance behavior is an appropriate endpoint for use in a regulatory standard. It is an ecologically significant effect when fish will avoid passing through a portion of a water body and could significantly effect utilization of habitat, migration, and spawning. It is particularly of concern in smaller streams where avoidance may not be possible.</p> <p>While the published study is from 1981, it was performed by scientists at the National Oceanic and Atmospheric Administration and was published in a peer-reviewed journal (Maynard, D.J. and Weber, D.D., 1981. Avoidance Reactions of Juvenile Coho Salmon (<i>Oncorhynchus kisutch</i>) to Monocyclic Aromatics, <i>Can J. Fish Aquat. Sci.</i> 38: 772-778). Much of the scientific literature for aquatic toxicology</p>

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			is twenty years or older, but so long as the studies are well documented and reviewed by MassDEP staff, MassDEP feels toxicology data from the 1980s can form an appropriate basis for a regulatory value.
Numerical Stds/GW3	C11-C22 Aromatics: 5 µg/L level is overly conservative and based on several USEPA target compounds (PAHs) not counted in this range. This inappropriately biases the standard and causes undue hardship. Also, the chemicals are only slightly soluble with a strong affinity for solids and organics, and their detection in groundwater is typically due to entrainment of solids. The use of filtering should be considered for these chemicals to allow for appropriate comparisons. Finally, in our experience we do not know of a site where C11-C22 aromatics have migrated to surface water. DEP should show just cause or revise the standards appropriately.	30	<p>The value of 5 ug/L is adjusted up to 5000 ug/L to derive the GW-3 standard. The adjustment includes a factor to account for low migration potential.</p> <p>The original target concentration for this fraction was 0.14 µg/L, the median reported PAH phototoxicity value. The final proposal was adjusted to reflect the <i>mean</i> value as a better descriptor of the average toxicity that may be posed by chemicals in this range.</p> <p>According to MassDEP's "Characterizing the Risks Posed by Petroleum Contaminated Sites Implementation of the MADEP VPH/EPH Approach" Policy # WSC-02-0411, filtering is generally <i>not</i> recommended in areas outside the source area of a petroleum release. However, the appropriate method of determining the concentration of contaminants transported in groundwater is a site management decision.</p>
Numerical Stds/GW3	Biodegradation during the migration or transport of petroleum compounds was not considered.	16	Biodegradation rates depend upon numerous site-specific factors, including soil characteristics, travel distance, and time since release. Method 1 standards are meant to be generic, and do not take into account site-specific conditions. Biodegradation is not considered in the development of the Method 1 standards for petroleum products or for other biodegradable compounds. Such consideration would be appropriate for a Method 2 or Method 3 assessment in which site-specific information could be collected and applied.
Numerical Stds/GW3	The published approach to setting the GW-3 standards wasn't always followed. See	28	MassDEP's proposed GW-3 value for toluene was derived using the methodology outlined in the

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	attachment in comments for xylenes and toluene.		<p>Proposed GW-3 standards (<a href="http://www.mass.gov/dep/bwsc/files/standard/gw3/proposal_gw3.htm">http://www.mass.gov/dep/bwsc/files/standard/gw3/proposal_gw3.htm</a>). MassDEP reviewed USEPA's AQUIRE database (<a href="http://www.epa.gov/ecotox/">http://www.epa.gov/ecotox/</a>) to identify the lowest toxic concentration reported. That concentration was obtained from a 1981 study by Maynard and Weber (Avoidance Reactions of Juvenile Coho Salmon (<i>Oncorhynchus kisutch</i>) to Monocyclic Aromatics, <i>Can J. Fish Aquat. Sci.</i> 38: 772-778). After reviewing the study to ensure that the results are valid and applicable, the lowest observed effect concentration (LOEC) from the study (if reported) was selected, in this case 1400 ug/L. Table 2 of the Maynard and Weber study lists an avoidance concentration of 1400 ug/L with a P-value &lt; 0.05. In this case, only an acute concentration was available, so this value was divided by ten to estimate a chronic value. The chronic value from ORNL (Oak Ridge National Laboratories, Suter and Tsao, 1996) was not used because, as per our methodology, when an acute value from AQUIRE is available it is used. While sufficient data may be available for deriving an NAWQC for toluene, USEPA has not derived an NAWQC for this compound, and MassDEP's methodology for deriving GW-3 standards does not involve deriving NAWQC.</p>
Numerical Stds/GW3	We question the toxicological endpoint selected for 1,1,1-trichloroethane (see attachment in comments).	28	<p>The value for 1,1,1-trichloroethane was derived using the methodology outline in the Proposed GW-3 standards (<a href="http://www.mass.gov/dep/bwsc/files/standard/gw3/proposal_gw3.htm">http://www.mass.gov/dep/bwsc/files/standard/gw3/proposal_gw3.htm</a>). MassDEP identified the study for which the lowest toxicity value was reported in the AQUIRE database. After reviewing the study to ensure that the results are valid and applicable, the lowest observed effect concentration (LOEC) from the study (if reported) was selected. In this case, only an acute concentration was available, so this value was divided</p>

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			by ten to estimate a chronic value.
Numerical Stds/Petroleum	Changes will be devastating to the economy and create an unfriendly business environment, for businesses and residents, in simple dollars and cents.	16	MassDEP believes that a clean and safe environment matters to the economy, the business environment and our residents. The success of the privatized waste site cleanup program also rests on the confidence the regulated community, banks and the public have in the protectiveness of cleanup decisions rendered by LSPs and based on the MCP regulations. The MCP is designed to offer flexibility in approaches that allow for cost-effective responses. It should also be noted that while some standards are, justifiably, becoming more stringent, many are becoming, justifiably, less stringent. The periodic review and adjustment of standards to ensure an appropriate level of protectiveness is required to maintain the overall integrity of the program.
Numerical Stds/Petroleum	The RfD of 0.06 mg/kg/day for C5-C8 aliphatic hydrocarbons appears to be based on n-hexane. It should be based on the proportion of n-hexane in the mixture, which would vary by source.	28	The general approach to establishing an RfD for each fraction is to use an RfD for a component of the fraction, which has been referred to as the "surrogate". To ensure that the RfD used for the fraction is adequately protective, the component with a relatively low (if not the lowest) RfD is chosen as the surrogate. The fact that the proportion of any component in a fraction varies by source is the main reason that composition cannot be considered in setting generic standards.
Numerical Stds/Physical Constants	There appears to be no consistent or hierarchical approach to using physical constants.	28	MassDEP has replaced all Henry's Law and solubility constants with values from the Syracuse Research data base [Syracuse Research Corporation, 2005, Interactive PhysProp Database Demo, <a href="http://www.syrres.com/esc/physdemo.htm">http://www.syrres.com/esc/physdemo.htm</a> ], which has been recently updated and is widely cited in the risk assessment field.
Numerical Stds/Plant Uptake	There is little documentation provided for the selection of plant uptake factors used by MassDEP. Also, the actual risk-based levels	28	MassDEP is revising the documentation for the Method 1 standards, including the plant uptake factors.

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	<p>calculated using these values end up being less than the MA background levels for many chemicals.</p>		<p>The fact that the calculated risk-based levels are less than background concentrations is not limited to risk-based concentrations from vegetable uptake. It also occurs for the incidental ingestion pathway for some chemicals. Background levels are always considered when setting the standards, such that no standard is set at a concentration below background.</p>
<p>Numerical Stds/Produce Intake</p>	<p>Age-specific intake rates are based on a study of daily intakes and are thus not representative of long-term exposure. Further, the intakes don't account for variable serving size of selective intakes of one versus another food. USEAP (1997) Exposures Factors Handbook gives homegrown produce intake rates approximately 1/2 that used here.</p>	<p>28</p>	<p>MassDEP reviewed the values reported in the available literature, and selected values that represent a high-end intake. This is consistent with 310 CMR 40.0923, which states that the selection of . . . frequency and exposure duration should be representative of the full extent of site activities consistent with the identified Site Use. The Method 1 Standards should be protective of a resident who chooses to make the fullest use possible of homegrown produce in his/her diet.</p> <p>The commenter correctly notes that the intake (serving size) of each fruit and vegetable will vary across the population. This is also true for water intake when calculating drinking water standards. MassDEP addresses this variability by choosing appropriately conservative point estimates within the range of variability. The overall goal is to not underestimate a person's intake of a market basket of homegrown produce.</p>
<p>Numerical Stds/RCs</p>	<p>Lower (Petroleum) RCs cast a wide net encompassing many more properties as well as many of the properties that have already been cleaned up.</p>	<p>16</p>	<p>The RC values for substances that have Method 1 Standards are linked directly to those standards so that there is a link between notification and risk potential. The Method 1 Standards are based primarily on risk potential, tempered by other considerations such as background and analytical limitations.</p> <p>Notification exemptions exist, see 310 CMR 40.0317(16) and (17), to address properties that are in</p>

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			the process of cleaning up, or have already cleaned up.
Numerical Stds/S3	The soil intake rate in S-3 cannot be justified. The exposure is simply too long to justify such a sustained enhanced rate.	28	The enhanced rate of 100 mg/day is based on professional judgment and was set for construction activities in general. There is no basis for applying this value to shorter time periods.
Numerical Stds/S3	The S-3 value is described as using the subchronic RfD but appears to reference the chronic values in error.	28	The comment is correct in that the subchronic value should be used. The spreadsheets have been corrected to use the subchronic values.
Numerical Stds/Toxicity Values	Toxicity values should be checked and updated prior to finalizing the standards.	27,28	In responding to public comments, MassDEP has completed a number of toxicity value revisions. Our goal is to ensure that all values are updated as appropriate.
Numerical Stds/Toxicity Values	PCBs: USEPA in IRIS gives several different slope factors for PCBs, depending on exposure routes. MassDEP should match the toxicity to the pathway rather than use one value across the board.	28	<p>As a matter of practice, MassDEP recommends using the highest slope factor presented in IRIS for food intake and also for situations where the most toxic congeners are known or likely to be present. For incidental ingestion and dermal absorption of PCBs in soil, the highest slope factor is generally recommended unless there is data showing that the most toxic congeners are not present in the soil. Further, even for media that USEPA assumes will not contain the most toxic congeners (water and air), MassDEP recommends assuming their presence unless their absence is demonstrated. At sites where the data demonstrate that the most toxic congeners are absent and the PCB mixture has a relatively low toxicity, a site-specific, congener-specific slope factor is an option.</p> <p>For Method 1 (non-site-specific) Standards, there is no justification for using a lower slope factor for soil. For drinking water exposures, the MMCL is used as the Method 1 Standard, so the slope factor does not affect the standard.</p>
Numerical Stds/Toxicity Values	Do not support the use of the MassDEP-derived unit risk value and thus the calculated GW-2	29	While MassDEP often relies upon USEPA's expertise, MassDEP believes it is appropriate to adopt different



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	standard. MassDEP should adopt the USEPA unit risk values for TCE and PCE.		<p>toxicity values and/or standards when:</p> <ul style="list-style-type: none"> <li>IRIS values have been rendered obsolete by new data from stronger studies, and there is a long time lag before revisions of the IRIS database are finalized by USEPA; or</li> <li>MassDEP toxicologists' opinions on the interpretation and application of the available data differ from USEPA positions.</li> </ul> <p>In the case of the RfC for tetrachloroethylene (PCE), ORS is using a value adopted for the Chem &amp; AAL list [MassDEP. December 1995. Massachusetts Threshold Effects Exposure Limits (TELs) and Allowable Ambient Limits (AALs) for Ambient Air., and MassDEP. February 1990. The Chemical Health Effects Assessment Methodology and the Method to Derive Allowable Ambient Limits. See <a href="http://mass.gov/dep/ors/orspubs.htm">http://mass.gov/dep/ors/orspubs.htm</a> - air]</p> <p>ORS reviewed this value and also reviewed literature in 2001. Based on that review, ORS concluded that a revision to the standards was not warranted.</p> <p>In the case of the RfC for trichloroethylene, ORS is currently using a value that was published on the USEPA's HEAST but has been withdrawn. (This is not a MassDEP derived value.) USEPA is in the process of developing new cancer toxicity information for trichloroethylene, but has not yet published a revised value.</p>
Numerical Stds/Toxicity Values	Several times the chronic RfC is used in lieu of an available subchronic RfC from HEAST.	27	The subchronic/chronic RfC issue was revisited for the Shortform project. At that time, it was decided that MassDEP should move away from using HEAST values to the extent feasible, since HEAST is no longer supported and updated by USEPA. In addition, ORS has raised many of the subchronic RfDs that were previously set equal to the chronic RfDs.

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			The Method 1 spreadsheets have been revised to incorporate the values used to develop the Shortform. The subchronic values selected are documented in the "Revisions to Dose-Response Values used in Human Health Risk Assessment" memorandum, August 18, 2004. <a href="http://www.mass.gov/dep/ors/files/sformdoc.pdf">http://www.mass.gov/dep/ors/files/sformdoc.pdf</a> .
Numerical Stds/Toxicity Values	Beryllium: IRIS Cancer Slope Factor withdrawn, inhalation carcinogen only.	34	ORS agrees with this comment and has removed the beryllium oral CSF from the Method 1 Standard calculation spreadsheets.
Numerical Stds/Toxicity Values	Dose-Response values should reflect current science and be consistent with draft ShortForm.	3,34	The toxicity values have been reviewed and updated (see above).
<b>Numerical Standards/Perchlorate</b>			
Numerical Stds/Note 1 Proposed Stds, UCLs, RCs and RQs  Perchlorate - Analytical	Concern expressed over lack of an appropriate monitoring method to reliably measure down to 1 µg/L, particularly for community and non-transient non-community systems. Currently only 7 labs can meet the Reporting Limit - MCP standards should be put off until a method is commercially available.	14, 15, 24	MassDEP has reviewed all comments related to perchlorate provisions and standard setting. At this time, MassDEP does not intend to promulgate a perchlorate MCP standard or Maximum Contaminant Level for drinking water supplies as part of these amendments. Rather, MassDEP intends to issue a separate public hearing draft with proposals for an MCP standard and Maximum Contaminant Level for perchlorate as well as the Department's response to the National Academy of Sciences report, <i>Health Implications of Perchlorate Ingestion</i> , National Research Council, issued in January 2005. MassDEP will solicit public comment for the separate public hearing draft.
Perchlorate - Feasibility	Groundwater Remediation may not be technically feasible under the MCP, and there are no approved technologies under the Safe Drinking Water Act.	15	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Feasibility	A Method 1 standard for perchlorate is impractical given such a low standard for such a widely distributed chemical.	17	The perchlorate proposal has been separated from this package of regulations (see note above).

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Perchlorate – Imminent Hazard	Imminent Hazard level (40.0955(2)(e)) should have footnote stating "interim standard replaced by Federal MCL when it becomes available."	14	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate – Imminent Hazard	Imminent Hazard level might be warranted if the epidemiological data was even marginally convincing, but it is not. This essentially means that any detection of perchlorate in GW-1 groundwater anywhere in Massachusetts poses an immediate hazard to human health.	28	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate – Imminent Hazard	Basing the Imminent Hazard Level of 1 µg/L on a Hazard Index = 1 is inconsistent with past regulatory practice, which applied a HI=1 only to those chemicals with Uncertainty Factors of 10 or less. The RfD for perchlorate includes Uncertainty Factors of 300, thus a HI=10 would appear to be sufficient.	15	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate – National Academy of Sciences report	MassDEP should wait for the NAS study.	14, 17, 24, 25,28,44	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Notification	Existing notification exemptions that could apply to perchlorate (e.g., permitted discharges, Army Ordinance, Public Water Supplies) create inequitable burdens on those required to notify.	15	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Notification	Public water system detecting perchlorate > 1 would trigger an IRA under the MCP...does this circumvent the notification exemption for water suppliers at 40.0317(11)? MassDEP's Drinking Water Program adequately regulates water suppliers.	26	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Releases	Perchlorate in the environment is not necessarily an indicator of a "release" subject to c.21e. Perchlorate may be there as a result of legal and permitted activities (blasting, fireworks, etc).	15	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Releases	It is difficult to assess the extent of release for residual chemicals from blasting agents that are used outdoors, such as at a quarry, and it is difficult to determine if a release has occurred.	15	The perchlorate proposal has been separated from this package of regulations (see note above).

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Perchlorate	MassDEP should understand the implications of various perchlorate sources in the environment prior to implementing standards that may drive widespread and intensive site investigation efforts and lead to substantial potential mitigation liability.	17	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	The proposed standards have the potential for substantial adverse economic impacts to quarry operations and development.	17	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	MassDEP should follow the existing USEPA guidance and adopt a range of 0.0001 to 0.0005 mg/kg/day as an RfD until the ongoing federal and state assessments are completed.	15	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	Setting a strict cleanup standard for perchlorate passes a huge burden to the risk manager. A level between 70-220 µg/L can save significant resources without endangering even susceptible populations.	14	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	Promulgating MCP requirements is premature considering MassDEP has not acted to promulgate an MCL under the Safe Drinking Water Act. The MCP GW-1 standard would become the <i>de facto</i> MCL.	15, 17	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	Current emergency testing and health advisory are sufficient to protect public health, as has been demonstrated by responses to perchlorate discoveries in drinking water.	17	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	The use of perchlorate at sites may have been historical and short-lived. Regs should recognize that monitoring may be sufficient for site closure.	17	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	Regulations should recognize that small releases of perchlorate (blasting for road cuts, flares, etc...) while within a GW-1 area may have little potential to impact a drinking water source.	17	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	The scope and extent of current regulatory	15	The perchlorate proposal has been separated from

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	oversight and permitting requirements for perchlorate should be reflected in and incorporated into any MCP proposal. Perhaps an "adequately regulated" status for these processes and activities [e.g., USEPA-MassDEP Stormwater Management Plans, industrial sewer discharge permits and multi-sector NPDES permits] would be better.		this package of regulations (see note above).
Perchlorate	MassDEP should work with the USEPA to ensure a risk-based discharge limit is used if perchlorate is ever regulated under NPDES.	17	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate	MassDEP should reopen the public comment for the proposed amendments related to perchlorate to fully consider the National Academy of Sciences report released on January 11, 2005.	42	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	Data presented [by opponents] is incomplete and designed only to support higher levels. Delay will put people in significant health risk. Level should be reviewed regularly.	10	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	The process of developing the RfD has been scientifically sound and appropriately protective of public health. The application of a weight-of-evidence approach was the correct way of using the best available data.	33	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	The proposed GW-1 standard for perchlorate will be protective of public health, MA Department of Public Health will continue to work with MassDEP to address public health concerns about perchlorate and to monitor continuing developments on its occurrence and related scientific literature.	40	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate – Toxicity	Detailed toxicological evaluations are provided looking at the studies that form the basis of the RfD, target health endpoints, toxicological model and safety factors used.	15, 17, 14,28	The perchlorate proposal has been separated from this package of regulations (see note above).

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Perchlorate – Toxicity	Intraspecies uncertainty factor of 3 (not 10) would be sufficient to protect even the most sensitive members of the population.	14	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	Rat is not a suitable model for the human population for perchlorate. The Argus Morphometry Study should not be used in the derivation of an RfD. Human data should take precedence.	14	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	The NOEL for iodine inhibition is fully protective against all toxic effects and is accurately measured. The NOEL for the Greer study should be used as the stepping off point in the risk assessment.	14, 28	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	1130 individuals writing to support a 1 µg/L "safe allowable level." We need to keep our drinking water safe for all of the towns and cities in Massachusetts.	11	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	Urge MassDEP to set a Maximum Contaminant Level goal of zero ppb because there is no safe level of perchlorate in drinking water and an MCL of 1 ppb. Pregnant women, children and approximately 10% of the population with thyroid conditions deserve a strong standard that will protect their health.	45	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate - Toxicity	It is interesting that MassDEP developed an RfD that equates to a safe drinking water concentration of 1 ppb, which is the current analytical limit of detection for that compound.	28	The perchlorate proposal has been separated from this package of regulations (see note above).
Perchlorate Background	Regs should recognize historic use of perchlorate may have increased local background levels and therefore should limit the feasibility of cleaning up perchlorate to background or No Significant Risk Levels.	17	The perchlorate proposal has been separated from this package of regulations (see note above).
<b>General</b>			
General/MCP Background definition	Background definition requires consideration of remediating contamination in fill and other	25,27	Comment is not directly related to a public hearing draft proposal. Any regulatory proposal on this

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	unidentifiable releases; complicates/adds significant cost to urban brownfields site redevelopment.		issue requires broader public discussion; no change was made in the final amendments to address the comment.
General/streamlined compliance approach for larger brownfields sites	MassDEP should consider a separate "streamlined compliance approach" for larger brownfields sites that relies upon Release Abatement Measures, and a new set of risk-based standards based on more limited exposure assumptions.	25,27	MassDEP asserts that the current regulations provide sufficient flexibility in process and risk characterization to achieve the aspects of a "streamlined compliance approach" described by the comments. MassDEP is willing to pursue broader public discussion on this matter. The comment is not directly related to a public hearing draft proposal; no change was made in the final amendments to address the comment.
General/MassDEP's current enforcement approach	Encourage MassDEP to focus enforcement efforts on "bad actors" and enforcement related to protection of human health and the environment, not administrative process.	25,27	MassDEP's enforcement focus is the protection of public health, safety, welfare and the environment. Comment unrelated to final amendments.
General/File Review	Current limitations on access to site files (particularly in the Northeast Region) due to MassDEP's resource constraints are slowing down due diligence reviews.	25,27	Unrelated to final amendments. MassDEP acknowledges the importance of access to files for proper and timely due diligence reviews. The current situation will be greatly improved when the Northeast Regional Office and files are relocated to Wilmington. Plans for relocating the files are currently underway.
<b>Asbestos - in - Soil</b>			
AIS - Analysis	Standard reference materials and proficiency testing should be required to ensure that data are defensible.	28	MassDEP has considered the numerous general and specific comments received on the 2004 public hearing draft provisions related to Asbestos in Soil (which included proposed amendments to the MCP, Solid Waste and Air Quality Regulations). Based on those comments and the results of ongoing work to evaluate best management practices, sampling and analytical issues and disposal options, MassDEP is extending the timeframe for and efforts to develop regulatory proposals related to Asbestos in Soil. MassDEP currently plans to issue these proposals in a separate public hearing draft; the asbestos in soil

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			related proposals that appeared in the 2004 public hearing draft will not be implemented as part of these amendments. MassDEP will respond to comments received on Asbestos in Soil provisions at that time.
AIS - Analysis	MassDEP should strongly consider setting standards and remedial requirements based on the Superfund Method (Modified Elutriator Method) rather than an arbitrary 1% composition limit.	28	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS – Best Management Practices (BMPs)	BMPs are too broad and too conservative. Should be redrafted to allow for flexibility in testing and safety protocols tailored to the potential for exposure. If the BMPs are too conservative, they will be ignored.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	BMPs should define when in the construction process it is appropriate to reduce the level of management...perhaps based on performance criteria developed during more active soil management portions of work.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	BMPs are too onerous for all the various AIS management activities that could occur at a given site. A redraft of the BMPs is submitted.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	MassDEP should specify the TEM test method and action level to be used for confirmatory sampling. AHERA TEM results are structures/mm2 of filter sample, not fibers/cc air.	2	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	Action level/clearance criteria should be 0.010 (not 0.01) f/cc to mirror MA DLWD - note potential for rounding from 0.014.	2	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	Screening (mechanical?) of soil to find asbestos is futile and could result in release of <u>more</u> fibers. You could even rescreen until you make the pieces smaller than the notification criteria.	2	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	NH requires 20 mils of polyethylene for asbestos shipments. MassDEP should require one type of liner regardless of the nature of the material.	2	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).



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	Can always approve thinner material on a case-by-case basis.		
AIS - Best Management Practices (BMPs)	Issue with placards - MassDEP should either specify all applicable placards or simply say that loads be placarded in accordance w/US DOT rules.	2	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	Rewrite appendix to include requirements to define the area and extent of cleanup, and inspection and sampling/analysis procedure to determine when cleanup is complete, and delete negative pressure requirements. Develop an "Outdoor" procedure. See paragraph 3.6.13 "Abatement of Contaminated Soil" in Unified Facilities Guide Specification 13280A.	14	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Best Management Practices (BMPs)	There's no discussion of erosion control or replanting soil with vegetation as a stabilizing agent.	34	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - BOL/WSR	Waste Shipment Record is the minimum requirement per USEPA - you can always add supplemental info like the Bill of Lading.	2	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - BOL/WSR	Supports BOL once all the issues concerning management of soils off-site have been addressed.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Data	There is currently very little data concerning the real risks associated with constructions at sites involving asbestos in soil, and may be insignificant. There is a need for data.	9,22,27,12,25	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Data	MassDEP should use pilot projects to systematically monitor air quality during soil management activities consistent with the BMPs presented in the policy. MassDEP could determine if there is some level of ACM debris that could be managed under the MCP as Remediation Waste or as Contaminated Media under current reuse policies.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).

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AIS - Deed Notice	Deed requirement would be prohibitively expensive and would introduce unnecessary uncertainty to transactional proceedings. There will be sufficient diligence to rely on pre-construction characterization studies.	12, 27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Definitions	"Asbestos is a family of naturally occurring flexible, fibrous mineral silicates."	14	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Definitions 40.0006	Counter intuitive: small pieces/fibers should be <u>more</u> of a concern and friable asbestos more likely to have released fibers when processed to make the fill.	2	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Definitions 40.0006	3 proposed definitions are confusing - propose 2 terms to distinguish "Debris Containing Releasable Asbestos" from "Debris Containing Non Releasable Asbestos". All releasable asbestos should be reportable and resolvable through the MCP.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Definitions 40.0006	Also need definitions for "asbestos-containing structures" and "visible". Naked eye? <i>In situ</i> or somehow manipulated?	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Definitions 40.0006	Some of the material defined as non-friable would be considered friable by BWP within a building, requiring licenses, certification and training for workers. Most hazardous waste workers don't have that training.	34	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Definitions 40.0006	The care and handling of asbestos-containing cement is not addressed.	34	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Definitions 40.0006	The term "accessible soil" should be either deleted or defined.	36	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Disposal Options	The proposal to exempt fiber-containing soil from the definition of Special Waste is not enough - reuse of the material must be allowed to reduce costs of disposing of construction-generated soil. Doesn't address disposal of asbestos containing debris. Must be in place before implementing this program.	9,22,27, 12,25	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).

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AIS - Disposal Options	The ability to consolidate and manage material on-site is unclear. It must be clear -- and allowed.	12,27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Disposal Options	Limiting use of engineered barriers to non-residential property would eliminate the consolidation and capping of ACM on-site -- a practice MassDEP has allowed in the past and should continue to allow.	25	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - General	There are positive and negative aspects with respect to Brownfields developments. Supports efforts to streamline in a consistent and coordinated approach asbestos-related releases and the AIS regulations.	8, 13, 20	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - General	The goals (a risk-based and cost-effective approach) are right targets but the program isn't developed sufficiently to implement at this time. Delay implementation until guidance, training, SOPs, etc... are in place.	9,22,12,25	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - General	In full agreement that the current MassDEP practice of removing all microscopic traces of asbestos is not supportive of economically viable risk management.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - General	The implications of the use of the MCP to regulate these materials must be better understood and these impacts addressed before regulatory changes are made.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - General	A database should be developed to collect information on soil parameters (e.g., % fines, organic carbon content, etc) with a goal of someday being able to relate these factors to releasable fibers measured using the elutriator method.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Jurisdiction	Once asbestos is identified at a site, management of the asbestos present could remain under BWP regulation, not the MCP. Clear guidance is needed at sites where there's BOTH asbestos and OHM.	34	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).

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AIS - Licenses and Certifications	OSHA regs also apply when work involves asbestos. MassDEP should seek input from MADLWD about what work would require licenses/certification. Worker training should also be described. The skill set is not the same for handling environmental media impacted by oil and/or hazardous material.	2,12,34	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS – Limited Removal Action	Support increasing the allowable volume to 100 cubic yards to better address areas that have been backfilled.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Notification	3/8" size difficult to determine...consistent results of size/quantity criteria. Some SOP should be developed to give Presumptive Certainty, whatever the criteria used. Suggest something like a sieve analysis conducted in a laboratory setting.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Notification	It is unclear whether the state expects facilities to go looking for asbestos contamination in soil. Should add language that will provide "asbestos-related" environmental investigation direction to facility owners/operators.	14	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Notification	Searching for 3/8" pieces is like looking for a needle in a haystack and could worsen conditions by causing ACM to break up and become airborne, particularly if some mechanical sifting is used. Self-management and BMPs are a better way to go.	14	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Notification	Agree with having notification criteria for asbestos and ACM.	36	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Notification	120-day criteria are too broad and not workable...suggest that a calculated percentage of ACM debris on the surface or in the soil be considered. Alternative approach described.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Notification	120-day criteria don't reflect stated policy to be notified of asbestos at depth if there's a potential for exposure. The regs are silent on an exposure evaluation or the need to notify at a	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).

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	future date when there may be an exposure pathway.		
AIS - Presumptive Certainty	MassDEP should allow a "Presumptive Certainty" approach to achieving an RAO at an asbestos site.	27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Risk	Current risk assessment guidance should be expanded to include asbestos, as well as a ShortForm for evaluating asbestos risks.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Risk	Target air concentrations for non-residential scenarios should be developed.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Sampling	Sampling for disposal will lead to more due-diligence sampling, resulting in a massive site-discovery project driven by lenders. However, there's no reliable method to analyze soil for asbestos and the hit/miss aspect reduces predictability and complicates planning.	9, 22,25	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Sampling	Before implementation, protocols are needed for evaluating a site to determine if a reporting obligation exists.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Sampling	Before implementation, protocols are needed for sampling and analyses of soil for off-site disposal that are sufficient to "prove a negative".	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Source 310 CMR 40.1003	Recommend deleting section defining AIS in accessible soil to be a source to ambient air... perhaps limit to soil containing Releasable Asbestos" and/or some size/quantity criteria be developed. The language as is would preclude A & B RAOs despite showing of NSR. If MassDEP is concerned about specific kinds of asbestos or certain quantities, this definition should reflect that and be narrower.	12,27	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS - Training	Before implementation, systematic and formal training of LSP and MassDEP personnel should be complete. A detailed list of training needs is submitted.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).

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AIS - Training	Include a statement that training for "cleanup operations" specified in 29 CFR 1926.65 (or state equivalent) do not apply to cleanup of ACM Soil/Debris.	14	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).
AIS -general	MassDEP should adopt a "Presumptive Certainty" approach for reporting negatives and proving NSR.	12	The Asbestos in Soil proposal has been separated from this package of regulations (see note above).